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1 January 25, 2024 8:37 a.m.

08:37AM 2 THE CLERK: Criminal Number 19-00099-DKW-KJM, United

08:37AM 3 States of America versus Michael J. Miske, Jr.

08:37AM 4 This case has been called for jury trial, day 12.

08:37AM 5 Counsel, please make your appearances for the record.

08:37AM 6 MR. INCIONG: Good morning, Your Honor. Mark Inciong,

08:37AM 7 Michael Nammar, and KeAupuni Akina for the United States.

08:37AM 8 Paralegal Kari Sherman and FBI special agent Thomas Palmer also

08:37AM 9 present.

08:37AM 10 THE COURT: Good morning.

08:37AM 11 MR. KENNEDY: Good morning, Your Honor. Michael

08:37AM 12 Kennedy with Lynn Panagakos, Michael Miske, and Ashley King.

08:37AM 13 Good morning, everyone.

08:37AM 14 THE COURT: Good morning. You may all be seated.

08:37AM 15 Good morning to the 18 persons on our jury. Everyone is

08:37AM 16 looking sharp, chipper, wide awake, ready to go, just like I

08:38AM 17 like to see you. So yesterday afternoon when we adjourned,

08:38AM 18 Mr. Kimoto was on the stand. Mr. Akina was in the midst of his

08:38AM 19 direct examination, and that's where we will resume this

08:38AM 20 morning. Mr. Akina, when you are ready.

08:38AM 21 PRESTON KIMOTO,

08:38AM 22 (Having previously been sworn, resumed the stand.)

08:38AM 23 MR. AKINA: Thank you, Your Honor.

08:38AM 24 RESUMED DIRECT EXAMINATION

08:38AM 25 BY MR. AKINA:

08:38AM 1 Q Good morning, Mr. Kimoto.

08:38AM 2 A Good morning.

08:38AM 3 Q So in your role as doing sales for Kama'aina Termite, were  
08:38AM 4 there biographical information that was provided to the  
08:38AM 5 potential customers regarding people associated with Kama'aina  
08:38AM 6 Termite?

08:38AM 7 A Not for Kama'aina Termite, but when I did sales for O'ahu  
08:38AM 8 Termite, there were bios when I presented to AOAOs for townhome  
08:38AM 9 pest control, ground treatment and fumigation estimates.

08:38AM 10 Q So for O'ahu Termite, you would use -- would you use those  
08:39AM 11 types of bios and other information with AOAOs?

08:39AM 12 A Yes.

08:39AM 13 Q And can you generally describe how that information would  
08:39AM 14 be provided to them?

08:39AM 15 A It was in a pamphlet form that you could -- that we could  
08:39AM 16 pass out.

08:39AM 17 MR. AKINA: Could we show the witness Exhibit 9-594,  
08:39AM 18 please?

08:39AM 19 THE COURT: Yes. I'm sure -- Mr. Kimoto, I'm not sure  
08:39AM 20 that all of the jurors know what an AOA is. So would you let  
08:40AM 21 them know what that is before we continue.

08:40AM 22 THE WITNESS: It's an association for townhomes and  
08:40AM 23 condominiums.

08:40AM 24 BY MR. AKINA:

08:40AM 25 Q So going to the -- well, first, have you seen this exhibit

08:40AM 1 before?

08:40AM 2 A Yes, I have.

08:40AM 3 Q And going to the third page of the document, without

08:40AM 4 reading anything that's on here, just generally, can you tell

08:40AM 5 us what that is?

08:40AM 6 A This is a short bio on myself.

08:40AM 7 Q If we go to the fourth page, can you tell us what this is?

08:40AM 8 A This is the front -- like, the front page of the proposal.

08:40AM 9 Q And is this part of a pamphlet that you were referring to

08:40AM 10 that would be provided to the AOA?

08:40AM 11 A Yes. This would be provided to the property management,

08:41AM 12 and also the board members.

08:41AM 13 Q And this one is for Mililani Garden Homes?

08:41AM 14 A Correct.

08:41AM 15 Q What type of place is that?

08:41AM 16 A That's a townhouse association.

08:41AM 17 Q Is that similar to an AOA?

08:41AM 18 A Yes, it is an AOA, I believe.

08:41AM 19 Q And then if we could go to page six and page seven and

08:41AM 20 page eight, and then to page ten.

08:41AM 21 Generally, what types of information are contained --

08:41AM 22 well, in this pamphlet, what types of information is provided

08:41AM 23 to the AOA?

08:41AM 24 A It would go over services that would be provided to them,

08:42AM 25 also with an estimate on the cost of those services.

08:42AM 1 Q And for this particular project for Exhibit 9-594, who was  
08:42AM 2 the sales representative?

08:42AM 3 A Myself.

08:42AM 4 Q Is this a fair and accurate -- this entire document, and  
08:42AM 5 it continues to page 13 -- but is this entire document we  
08:42AM 6 previously looked at, is it a fair and accurate copy of a  
08:42AM 7 pamphlet that was used for this particular job?

08:42AM 8 A Yes.

08:42AM 9 MR. AKINA: At this time, I'd offer Exhibit 9-594 into  
08:42AM 10 evidence.

08:42AM 11 THE COURT: Any objection, counsel?

08:42AM 12 MR. KENNEDY: No objection.

08:42AM 13 THE COURT: Without, objection, 9-594 is admitted.  
08:42AM 14 You may publish.

08:42AM 15 (Exhibit 9-594 was received in evidence.)

08:42AM 16 MR. AKINA: Before we publish this one, could we show  
08:42AM 17 the witness Exhibit 9-860 as well?

08:42AM 18 THE COURT: Yes.

08:43AM 19 BY MR. AKINA:

08:43AM 20 Q Going to page three again, just so the witness can orient  
08:43AM 21 himself, and page four.

08:43AM 22 Exhibit 9-860, what is that generally?

08:43AM 23 A This was another proposal.

08:43AM 24 Q Is it for that same location as the previous one you  
08:43AM 25 looked at?

08:43AM 1 A No this is for Waiiau Garden Villas.

08:43AM 2 Q Does it have similar information perspective to this  
08:43AM 3 particular job as the previous exhibit you looked at?

08:43AM 4 A Yes. The difference -- the only difference is the name  
08:43AM 5 and the price.

08:43AM 6 Q Going to page eight. Again, who is the sales  
08:43AM 7 representative for this project?

08:43AM 8 A Myself.

08:44AM 9 Q Is this also a fair and accurate copy of a pamphlet that  
08:44AM 10 was used for this particular project?

08:44AM 11 A Yes.

08:44AM 12 MR. AKINA: I'd offer 9-860 into evidence.

08:44AM 13 THE COURT: Mr. Kennedy?

08:44AM 14 MR. KENNEDY: No objection.

08:44AM 15 THE COURT: Without objection, Exhibit 9-860 is  
08:44AM 16 admitted. You may publish that as well.

08:44AM 17 (Exhibit 9-860 was received in evidence.)

08:44AM 18 BY MR. AKINA:

08:44AM 19 Q If we could publish the previous one, 9-594. So this is  
08:44AM 20 the first -- is this just the cover page for the pamphlet?

08:44AM 21 A Yes.

08:44AM 22 Q And going to the second page, what type of information, if  
08:44AM 23 you could just very generally summarize?

08:44AM 24 A This is giving information about the background of O'ahu  
08:44AM 25 Termite and Pest Control.

08:44AM 1 Q On page four, can you tell the jury what this shows?

08:45AM 2 A This shows the Mililani Garden Homes II, I guess the  
08:45AM 3 project for the pamphlet that we made.

08:45AM 4 Q What was the date for this proposal?

08:45AM 5 A September 16, 2019.

08:45AM 6 Q And Mililani Garden Homes II, is that just one single  
08:45AM 7 family home residence?

08:45AM 8 A No, it's a townhome complex.

08:45AM 9 Q So it's multiple townhouses?

08:45AM 10 A Multiple building, yes, with multiple townhouses in each  
08:45AM 11 building.

08:45AM 12 Q And as part of the promotional materials, if you go back  
08:45AM 13 to page three, what is this that we are looking at?

08:45AM 14 A This is a short bio on myself.

08:45AM 15 Q And if we could zoom in on the words at the bottom.

08:46AM 16 At the time that you were working at O'ahu Termite and  
08:46AM 17 Pest Control, who generated these pamphlets?

08:46AM 18 A Angela Varnadore.

08:46AM 19 Q Did you submit this bio on yourself to Angela prior to it  
08:46AM 20 being furnished to the customers?

08:46AM 21 A No, I did not.

08:46AM 22 Q And at the time that you were working at O'ahu Termite and  
08:46AM 23 Pest Control, did you review these -- your bio to make sure  
08:46AM 24 that it was accurate?

08:46AM 25 A I did not.



08:46AM 1 Q But would you provide these to customers?

08:46AM 2 A Yes, I would.

08:46AM 3 Q So fair to say you provide these to customers even though  
08:46AM 4 you hadn't fully read the bio on yourself?

08:46AM 5 A That's correct.

08:46AM 6 Q And reading through this bio, we go to the second to the  
08:46AM 7 last sentence right in the middle. I think it's visible here.

08:47AM 8 Do you see that portion where it says "his  
08:47AM 9 wide-ranging skill set has enabled him to successfully  
08:47AM 10 contribute in a variety of roles, including project management,  
08:47AM 11 business development, and product education."

08:47AM 12 Do you see that line?

08:47AM 13 A Yes.

08:47AM 14 Q What's the purpose -- even though you had not read this to  
08:47AM 15 verify it, would you make similar representations to customers  
08:47AM 16 that you had some type of background?

08:47AM 17 A Yes.

08:47AM 18 Q Can you explain a little bit about how you would talk to  
08:47AM 19 customers about that?

08:47AM 20 A I would let them know that this wasn't my first time  
08:47AM 21 managing big projects like this -- like this one.

08:47AM 22 Q And what's the point of telling that to a customer?

08:47AM 23 A To gain credibility with the customer and gain trust.

08:47AM 24 Q And was that accurate at the time?

08:47AM 25 A Yes.

08:47AM 1 Q And going to the next sentence below that, where it says  
08:48AM 2 "Preston is a graduate of Kaimuki High School," stopping there,  
08:48AM 3 was that accurate at that time?  
08:48AM 4 A That is accurate.  
08:48AM 5 Q And then continuing at the University of Hawaii at Manoa,  
08:48AM 6 was that accurate at the time?  
08:48AM 7 A That is not accurate.  
08:48AM 8 Q Have you graduated from the University of Hawaii at Manoa?  
08:48AM 9 A No.  
08:48AM 10 Q Did you tell anyone at O'ahu Termite and Pest Control that  
08:48AM 11 you were a graduate of University of Hawaii at Manoa?  
08:48AM 12 A No.  
08:48AM 13 Q Again, what relevance, if any, does that information have  
08:48AM 14 to a pamphlet like this in a proposal?  
08:48AM 15 A I don't know.  
08:48AM 16 Q What's the point in including your educational background  
08:48AM 17 in a pamphlet?  
08:48AM 18 A To build more credibility.  
08:48AM 19 Q If we go to page five.  
08:49AM 20 For this particular project, what type of work was to  
08:49AM 21 be done? If we could zoom under the bottom half of scope of  
08:49AM 22 work.  
08:49AM 23 A This would be for fumigation of the buildings and also  
08:49AM 24 Sentricon takeover.  
08:49AM 25 Q And I don't think you've talked about Sentricon yet.

08:49AM 1 What is that generally?

08:49AM 2 A Sentricon is another form of ground treatment, but instead  
08:49AM 3 of using Termidor, the liquid treatment, we would install bait  
08:49AM 4 stations around the building -- buildings.

08:49AM 5 Q And you had testified that there was a cheaper  
08:49AM 6 alternative, sort of a generic brand to Termidor; is that  
08:49AM 7 Sentricon?

08:49AM 8 A No. Sentricon is a more expensive form of ground  
08:49AM 9 treatment.

08:49AM 10 Q So Sentricon and Termidor are two separate things?

08:49AM 11 A Yes.

08:49AM 12 Q If we go to page ten.

08:50AM 13 What does this show?

08:50AM 14 A This shows the price for the fumigation and then on the  
08:50AM 15 bottom of that, it shows the Sentricon takeover price, and also  
08:50AM 16 to monitor the Sentricon system.

08:50AM 17 Q If we could zoom in on the pricing.

08:50AM 18 In this particular proposal, what was the price?

08:50AM 19 A For tent fumigation of the buildings, it would be 114,000.  
08:50AM 20 For the Sentricon takeover, it would be \$18,760. The annual  
08:51AM 21 monitoring of the Sentricon system would be \$6,000. If they  
08:51AM 22 decided that they wanted to do a three-year program --  
08:51AM 23 monitoring program, it would be \$29,000 upfront. And if they  
08:51AM 24 decided to do a five-year Sentricon monitoring, it would be --  
08:51AM 25 upfront it would be \$36,960.

08:51AM 1 Q Going to page 12, are these just some sample reviews that  
08:51AM 2 were provided?

08:51AM 3 A Yes.

08:51AM 4 Q Did you have any personal knowledge about these customers?

08:51AM 5 A No.

08:51AM 6 Q And then, going to the last page, page 13.

08:51AM 7 You see the contact information as that address out in  
08:51AM 8 Pearl City?

08:51AM 9 A Yes.

08:51AM 10 Q What location does that refer to?

08:52AM 11 A That is -- that's the mailing address for O'ahu Termite  
08:52AM 12 and Pest Control.

08:52AM 13 Q Is that the one you mentioned yesterday, that storage  
08:52AM 14 facility?

08:52AM 15 A Correct.

08:52AM 16 Q And at the time in 2019, where were you actually reporting  
08:52AM 17 to?

08:52AM 18 A The office was in Kama'aina Termite and Pest Control.

08:52AM 19 Q If we could go to Exhibit 9-860, please. Go to page  
08:52AM 20 three.

08:52AM 21 So this is for a different complex, correct? Go to  
08:52AM 22 page four.

08:52AM 23 A Yes.

08:52AM 24 Q And again, Waiau Garden Villas, is that one single  
08:52AM 25 residence?

08:52AM 1 A No, it's a town -- it has -- it has buildings and there is  
08:53AM 2 multiple townhomes in those buildings.

08:53AM 3 Q In this proposal, what's the date for it?

08:53AM 4 A October 14, 2019.

08:53AM 5 Q And then, going back to page three. If you look at that  
08:53AM 6 second to the last sentence about your educational background,  
08:53AM 7 is that the same as the previous exhibit?

08:53AM 8 A Yes.

08:53AM 9 Q If we go to page five, what was the work to be done for  
08:53AM 10 this project?

08:53AM 11 A The work to be done would be a Termidor liquid treatment.

08:53AM 12 Q So not fumigation for this one?

08:53AM 13 A Not fumigation.

08:53AM 14 Q And how many buildings?

08:53AM 15 A 22 buildings.

08:53AM 16 Q If we go to page eight, is it similar to the previous  
08:53AM 17 exhibit, this also provides the cost breakdown?

08:54AM 18 A Yes.

08:54AM 19 MR. AKINA: Could we show the witness Exhibit 9-477,  
08:54AM 20 which is already in evidence?

08:54AM 21 BY MR. AKINA:

08:54AM 22 Q Yesterday, you testified about an incident back in 2018  
08:54AM 23 where someone had to be pulled out of a residence that was  
08:54AM 24 being fumigated.

08:54AM 25 Do you recall that?

08:54AM 1 A Yes.

08:54AM 2 Q And can you tell us again what this is a picture of?

08:54AM 3 A This was a picture of the fire department attending to the  
08:54AM 4 victim or attending to the tenant.

08:54AM 5 Q Do you see two individuals in the background, one with his  
08:54AM 6 arms crossed in a gray shirt, and then an individual to the  
08:54AM 7 right if you are looking at the photo, in white -- in a white  
08:55AM 8 T-shirt?

08:55AM 9 A Yes.

08:55AM 10 Q Do you recognize those individuals?

08:55AM 11 A Yes.

08:55AM 12 Q Who are they?

08:55AM 13 A Mike is in the white T-shirt and I'm in the gray T-shirt.

08:55AM 14 Q So that's you and the defendant on scene for that  
08:55AM 15 incident?

08:55AM 16 A Yes.

08:55AM 17 THE COURT: Do you want to display that to the jury?

08:55AM 18 MR. AKINA: Oh, yes. Sorry. Could we publish that to  
08:55AM 19 the jury.

08:55AM 20 THE COURT: You may.

08:55AM 21 MR. AKINA: Thank you, Your Honor.

08:55AM 22 BY MR. AKINA:

08:55AM 23 Q If we could zoom in on those two individuals, the one in  
08:55AM 24 gray and the one in white.

08:55AM 25 Again, the one in gray was you?

08:55AM 1 A Yes.

08:55AM 2 Q And who is the individual in white?

08:55AM 3 A Mike.

08:55AM 4 Q Are you familiar with what an RME is?

08:56AM 5 A Yes.

08:56AM 6 Q What is that to your understanding?

08:56AM 7 A That's a responsible managing employee.

08:56AM 8 Q And what is your understanding of whether or not a

08:56AM 9 responsible managing employee is needed to operate a company

08:56AM 10 like Kama'aina Termite or O'ahu Termite?

08:56AM 11 MR. KENNEDY: Objection; relevance and speculation.

08:56AM 12 THE COURT: I'll allow it for now.

08:56AM 13 THE WITNESS: It's required.

08:56AM 14 BY MR. AKINA:

08:56AM 15 Q During your time either at Kama'aina Termite or O'ahu

08:56AM 16 Termite, did you -- well, do you know an individual named Mike

08:56AM 17 Warden?

08:56AM 18 A Yes.

08:56AM 19 Q And while you were working at Kama'aina Termite or O'ahu

08:56AM 20 Termite and Pest Control, did you see an individual named Mike

08:56AM 21 Warden working there?

08:56AM 22 A Yes.

08:56AM 23 Q During which time frame?

08:56AM 24 A Both time frames.

08:56AM 25 Q So the entire time that you were there, you saw him there?

08:56AM 1 A Yes.

08:56AM 2 Q All the way up to your arrest?

08:57AM 3 A No. Mike Warden had left us maybe a year prior to our

08:57AM 4 arrest.

08:57AM 5 Q So you were arrested in 2020 and he left that year

08:57AM 6 sometime in 2019?

08:57AM 7 A Yeah. I don't know the exact date, but it was around that

08:57AM 8 time period.

08:57AM 9 Q Was this before or after the kidnapping had taken place?

08:57AM 10 A This was after the kidnapping.

08:57AM 11 Q Do you know who an individual is who is named Kerry

08:57AM 12 Kitteringham?

08:57AM 13 A I've met him once, maybe in the office.

08:57AM 14 Q And besides that one time that you met him at the office,

08:57AM 15 did you see him while you were working at Kama'aina Termite or

08:57AM 16 O'ahu Termite?

08:57AM 17 A No.

08:57AM 18 Q And are you familiar with an individual named Harry

08:57AM 19 Kansaki?

08:57AM 20 A Yes, I've heard of Harry.

08:58AM 21 Q And same question.

08:58AM 22 During the time that you were working at Kama'aina

08:58AM 23 Termite and O'ahu Termite, did you see Harry Kansaki working

08:58AM 24 there?

08:58AM 25 A No.



08:58AM 1 Q Do you know who Harry -- what Harry Kansaki's relationship  
08:58AM 2 was, if any, to either of those companies?

08:58AM 3 A I knew that Harry was the original owner of O'ahu Termite  
08:58AM 4 and Pest Control.

08:58AM 5 Q And then what happened?

08:58AM 6 A Then Mike had purchased O'ahu Termite and Pest Control  
08:58AM 7 from Harry.

08:58AM 8 Q And after that purchase took place, where did you shift  
08:58AM 9 your focus?

08:58AM 10 A To O'ahu Termite and Pest Control.

08:58AM 11 Q Do you have a brother?

08:58AM 12 A Yes.

08:58AM 13 Q What's his name?

08:58AM 14 A Devin Kimoto.

08:58AM 15 Q Was Devin Kimoto an employee on payroll at Kama'aina  
08:59AM 16 Termite?

08:59AM 17 A No.

08:59AM 18 Q What -- did he do any work for that company or any other  
08:59AM 19 other companies owned by the defendant?

08:59AM 20 A Yes. He helped run errands for Hawaii Partners.

08:59AM 21 Q What type of errands?

08:59AM 22 A Picking up and dropping off cars at the repair shop or  
08:59AM 23 from Manheim.

08:59AM 24 Q About how long did he work regarding Hawaii Partners?

08:59AM 25 A He was there for a short period of time. Not more than, I

08:59AM 1 would say, maybe three to eight months.

08:59AM 2 Q As far as his responsibilities, was -- you said he would  
08:59AM 3 pick up the cars from the auctions and drive them back and  
08:59AM 4 forth.

08:59AM 5 Was he ever in charge of managing people?

08:59AM 6 A No.

08:59AM 7 Q Was he ever -- did he have any supervisory position in any  
08:59AM 8 other companies?

08:59AM 9 A No.

08:59AM 10 Q How was he paid?

09:00AM 11 A Cash.

09:00AM 12 Q Do you know who would pay him?

09:00AM 13 A Mike would pay him; myself or Mike.

09:00AM 14 Q Can you explain how that would work?

09:00AM 15 A He was paid a hundred dollars a day. And if Mike wasn't  
09:00AM 16 around when he needed to get paid, then I would pay him out of  
09:00AM 17 my pocket and Mike would reimburse me.

09:00AM 18 Q Do you know who Michael Masutani is?

09:00AM 19 A Yes.

09:00AM 20 Q Who is that?

09:00AM 21 A Michael Masutani, he ran errands also for Hawaii Partners.

09:00AM 22 Q And do you know him by any other name?

09:00AM 23 A Koa.

09:00AM 24 Q Is that one of his -- is that his middle name?

09:00AM 25 A I believe so.

09:00AM 1 Q And do you know who Tori Clegg is?

09:01AM 2 A Yes.

09:01AM 3 Q Who is Tori Clegg?

09:01AM 4 A Tori Clegg was, I guess, friends with Mike; one of Mike's  
09:01AM 5 girlfriends.

09:01AM 6 Q What relationship if any did Michael Masutani and Tori  
09:01AM 7 Clegg have to each other?

09:01AM 8 A They are siblings.

09:01AM 9 Q So Michael Masutani -- you mentioned that he would do  
09:01AM 10 errands for Hawaii Partners?

09:01AM 11 A Yes.

09:01AM 12 Q What type of errands?

09:01AM 13 A Picking up, dropping off cars, showing cars for sale,  
09:01AM 14 taking pictures for the Craigslist ad.

09:01AM 15 Q And do you know who brought him in to do those errands?

09:01AM 16 A Mike.

09:01AM 17 Q The defendant?

09:01AM 18 A Yes.

09:01AM 19 Q And how is Michael Masutani paid?

09:01AM 20 A In cash.

09:01AM 21 Q Can you explain how that worked?

09:01AM 22 A Koa got paid a hundred dollars a day and same -- if he  
09:02AM 23 needed the money at the end of the week, if Mike wasn't around  
09:02AM 24 then I would pay him out of my pocket and Mike would pay me  
09:02AM 25 back.

09:02AM 1 Q Did Michael Masutani ever manage people?

09:02AM 2 A No.

09:02AM 3 Q Was he ever an owner of Hawaii Partners?

09:02AM 4 A No.

09:02AM 5 Q Was there an accountant who was used for the defendant's  
09:02AM 6 businesses?

09:02AM 7 A Yes, Trisha Castro.

09:02AM 8 Q Did you ever have any interactions with Trisha Castro?

09:02AM 9 A Yes.

09:02AM 10 Q What types of interactions, broadly speaking?

09:02AM 11 A Business interactions. She would text me, ask questions  
09:02AM 12 about what's going on, ask questions about the bank account.

09:02AM 13 Q And did you ever -- would you communicate with her in  
09:02AM 14 person or some other method?

09:02AM 15 A We would communicate in person, text each other, and also  
09:02AM 16 call each other.

09:02AM 17 Q Did you ever have a text conversation with the accountant  
09:03AM 18 Trisha Castro regarding Michael Masutani's role?

09:03AM 19 A Yes.

09:03AM 20 Q And generally, what did you advise her?

09:03AM 21 A That he wasn't an official employee of Hawaii Partners and  
09:03AM 22 we paid him cash.

09:03AM 23 MR. AKINA: Could we show the witness Exhibit 9-570,  
09:03AM 24 please.

09:03AM 25 THE COURT: Yes.

09:03AM 1 MR. AKINA: And this is -- looking at the top, this is  
09:03AM 2 a certificate of authenticity, Your Honor.  
09:03AM 3 BY MR. AKINA:  
09:03AM 4 Q But going to the second page, do you recognize what this  
09:03AM 5 is, Mr. Kimoto? If we could zoom in on the bottom text,  
09:03AM 6 please.  
09:03AM 7 A Yes.  
09:03AM 8 Q Without reading it, just tell us what this is.  
09:04AM 9 A This was a text thread between me and Trisha Castro.  
09:04AM 10 Q Regarding what topic?  
09:04AM 11 A Hawaii Partners and Koa.  
09:04AM 12 Q If you could go to the third page, is that a continuation  
09:04AM 13 of that thread?  
09:04AM 14 A Yes.  
09:04AM 15 MR. AKINA: At this time, I'd offer 9-570 into  
09:04AM 16 evidence.  
09:04AM 17 THE COURT: Any objection?  
09:04AM 18 MR. KENNEDY: No objection, Your Honor.  
09:04AM 19 THE COURT: Without objection, Exhibit 9-570 is  
09:04AM 20 admitted. You may publish.  
09:04AM 21 (Exhibit 9-570 was received in evidence.)  
09:04AM 22 BY MR. AKINA:  
09:04AM 23 Q If we could show page two and zoom in on the bottom text.  
09:04AM 24 Maybe just focus on the top three lines for now. Okay.  
09:05AM 25 What's the date of this text exchange with Trisha

09:05AM 1 Castro?

09:05AM 2 A November 16, 2016.

09:05AM 3 Q And at that time, were you working for the defendant?

09:05AM 4 A Yes.

09:05AM 5 Q And at that time, was Trisha Castro an accountant for his

09:05AM 6 businesses?

09:05AM 7 A Yes.

09:05AM 8 Q This first line that starts at 1959 and 26 seconds, who is

09:05AM 9 sending that text?

09:05AM 10 A That is Trisha Castro.

09:05AM 11 Q And she asks you, "What does Michael Masutani do for

09:05AM 12 Termite and Hawaii Partners?" Correct?

09:05AM 13 A Yes.

09:05AM 14 Q So did Michael Masutani do anything relating to -- for

09:05AM 15 either of the termite companies?

09:05AM 16 A If there was errands that needed to be run, he would run

09:05AM 17 errands.

09:05AM 18 Q And what did you reply to her in the next line?

09:05AM 19 A "He runs errands for both companies."

09:06AM 20 Q And then her request is whether or not a 1099 needs to be

09:06AM 21 issued to him to get him on payroll, right?

09:06AM 22 A Yes.

09:06AM 23 Q If we could scroll down.

09:06AM 24 And do you ever respond to that?

09:06AM 25 A Sorry. Yes.

09:06AM 1 Q And this is on the next day, on the 17th of November,

09:06AM 2 right?

09:06AM 3 A Correct.

09:06AM 4 Q And you say that you want to see, if you can -- if she can

09:06AM 5 scan checks with large amounts that were written to him?

09:06AM 6 A Yes.

09:06AM 7 Q And if we could go to the remaining text on that page.

09:07AM 8 Is this Trisha Castro talking about how that would

09:07AM 9 happen; generating, getting copies of checks or information

09:07AM 10 relating to checks that were written?

09:07AM 11 A Yes.

09:07AM 12 Q So is it fair to say back in 2016, is that when Michael

09:07AM 13 Masutani was doing errands at Hawaii Partners and for the

09:07AM 14 termite companies?

09:07AM 15 A Yes.

09:07AM 16 Q While at O'ahu Termite and Pest Control, did you have a

09:07AM 17 company car at any point in time?

09:07AM 18 A Yes.

09:07AM 19 Q And did you discuss how to get a company car with the

09:07AM 20 defendant?

09:07AM 21 A Yes.

09:08AM 22 Q Tell us about that discussion.

09:08AM 23 A Mike had mentioned to me that if I wanted to get a new

09:08AM 24 truck, that I would have to sign for the lease on my own, but

09:08AM 25 he would reimburse me for the lease and the insurance of the

09:08AM 1 truck.

09:08AM 2 Q So this would be a company car but signed in your name?

09:08AM 3 A Correct.

09:08AM 4 Q Then the company would make payments on your behalf?

09:08AM 5 A Yes.

09:08AM 6 Q Did you agree to do that?

09:08AM 7 A I did not agree to do that.

09:08AM 8 Q What did you tell the defendant?

09:08AM 9 A That I wasn't going to go sign for the truck.

09:08AM 10 Q So how did you -- you said you did have a company truck.

09:08AM 11 How did you end up with a company truck if you

09:08AM 12 declined to sign a lease?

09:08AM 13 A Later on during the process of that, Koa had told me that

09:09AM 14 he just came back from Toyota for signing for the -- signing

09:09AM 15 for my truck.

09:09AM 16 Q And Koa is -- who is Koa?

09:09AM 17 A Koa is --

09:09AM 18 Q Is that Mr. Masutani?

09:09AM 19 A Yes.

09:09AM 20 Q What was Mr. Masutani's demeanor when he told you that?

09:09AM 21 A He was a little, I guess, resentful that he had to sign

09:09AM 22 for the truck.

09:09AM 23 Q Can you describe the truck that you used?

09:09AM 24 A It was a white Tacoma and it had O'ahu Termite logos on

09:09AM 25 it. It had a roach in the back and a termite on the side of



09:09AM 1 both sides of the truck.

09:09AM 2 MR. AKINA: Could we show the witness Exhibit 1-570,  
09:09AM 3 please?

09:09AM 4 BY MR. AKINA:

09:09AM 5 Q Do you recognize this?

09:10AM 6 A Yes.

09:10AM 7 Q What is this a picture of?

09:10AM 8 A That's a picture of my company vehicle.

09:10AM 9 Q How do you know it's your company vehicle as to someone  
09:10AM 10 else's company vehicle?

09:10AM 11 A Because I was the only one that had a white O'ahu Termite  
09:10AM 12 truck.

09:10AM 13 Q Were there other trucks with different colors?

09:10AM 14 A There were two blue ones, the same Toyota Tacoma, but just  
09:10AM 15 in blue.

09:10AM 16 Q About how many company trucks were there during the time  
09:10AM 17 that you worked there?

09:10AM 18 A Three.

09:10AM 19 Q Is this a fair and accurate picture of the truck that you  
09:10AM 20 used while you were working for O'ahu Termite?

09:10AM 21 A Yes.

09:10AM 22 MR. AKINA: I would offer to admit Exhibit 1-570 into  
09:10AM 23 evidence.

09:10AM 24 THE COURT: Any objection?

09:10AM 25 MR. KENNEDY: No objection.

09:10AM 1 THE COURT: Without objection, Exhibit 1-570 is  
09:10AM 2 admitted. You may publish.

09:10AM 3 (Exhibit 1-570 was received in evidence.)

09:10AM 4 BY MR. AKINA:

09:10AM 5 Q And do you see the logo on this truck?

09:10AM 6 A Yes.

09:10AM 7 Q What part of the truck is the logo on?

09:11AM 8 A The front passenger door.

09:11AM 9 Q And what is that on the rear, sort of the bed of the  
09:11AM 10 truck?

09:11AM 11 A A termite.

09:11AM 12 Q Do you know a person named Mark Lapenya?

09:11AM 13 A Yes.

09:11AM 14 Q Who is Mark Lapenya?

09:11AM 15 A Mark was a detailer for the company.

09:11AM 16 Q What does a detailer do?

09:11AM 17 A He would detail company vehicles.

09:11AM 18 Q What kind of work does that entail, detailing?

09:11AM 19 A Washing, polishing, vacuuming vehicles.

09:11AM 20 Q And you said he was a detailer for the company.

09:11AM 21 Which company are you referring to?

09:11AM 22 A He worked at Kama'aina Termite and Pest Control in the  
09:11AM 23 bottom -- like the bottom bay area where the trucks were  
09:12AM 24 parked.

09:12AM 25 Q That's where he physically worked?

09:12AM 1 A Correct.

09:12AM 2 Q Did he only work on Kama'aina Termite and Pest Control  
09:12AM 3 vehicles?

09:12AM 4 A No, he mainly detailed Mike's vehicles.

09:12AM 5 Q And about when did you meet him?

09:12AM 6 A I met Mark when I first started in 2015.

09:12AM 7 Q What was -- did you ever see him work on personal  
09:12AM 8 vehicles?

09:12AM 9 A Yes.

09:12AM 10 Q Whose vehicles were those?

09:12AM 11 A Mike.

09:12AM 12 Q The defendant?

09:12AM 13 A Mike's, yes.

09:12AM 14 Q Did you see Mr. Lapenya's work product, meaning what type  
09:12AM 15 of job did he do, if you could tell?

09:12AM 16 A I don't --

09:12AM 17 Q Did he do a good job?

09:12AM 18 A Yes.

09:12AM 19 Q And were there other detailers who worked around that  
09:12AM 20 time?

09:12AM 21 A No.

09:12AM 22 Q From your observations, did you ever see Mark Lapenya and  
09:12AM 23 the defendant interact with each other while he was working  
09:13AM 24 there?

09:13AM 25 A No, not really.

09:13AM 1 Q Can you describe your relationship with Mr. Lapenya?

09:13AM 2 A Yeah. We joked around. We had a good relationship.

09:13AM 3 Q Now, at some point in 2015, did Mr. Lapenya stop working  
09:13AM 4 for the defendant?

09:13AM 5 A Yes.

09:13AM 6 Q And how did the defendant react to that?

09:13AM 7 A He didn't like that Mark was not working.

09:13AM 8 Q Can you explain what happened?

09:13AM 9 A Mike had asked -- so when Mark quit and stopped working at  
09:13AM 10 Kama'aina, Mike asked me to go and talk to Mark to see if I can  
09:13AM 11 get Mark to come back and work.

09:13AM 12 Q What did you do?

09:13AM 13 A I went to where Mark was working and I approached him and  
09:14AM 14 I asked him, "What can we do? Mike really wants you to come  
09:14AM 15 back. And what can we do to make this work?"

09:14AM 16 Q And to be clear, is this -- where he was working was this  
09:14AM 17 still at Kama'aina or a different location?

09:14AM 18 A No, it was a different location.

09:14AM 19 Q Was this his new job?

09:14AM 20 A Yes.

09:14AM 21 Q So you asked Mr. Lapenya what could be done to get him to  
09:14AM 22 come back.

09:14AM 23 And so, how did that conversation go?

09:14AM 24 A When I first approached him, he said that he didn't want  
09:14AM 25 any trouble and I assured him that I wasn't here to bring

09:14AM 1 trouble to him. I was just there to talk to him and we just  
09:14AM 2 value his work and we wanted him to come back, and what does he  
09:14AM 3 need, more money? What can we do to make him come back -- to  
09:14AM 4 have him come back and work.

09:14AM 5 Q Did you say anything else to sure him during that  
09:15AM 6 conversation?

09:15AM 7 A Yes. I said that I wasn't here to hurt him.

09:15AM 8 Q And why did you feel it necessary to tell Mr. Lapenya that  
09:15AM 9 you weren't there to hurt him?

09:15AM 10 A When I first arrived, he was very standoffish and I -- and  
09:15AM 11 that's when I told him I wasn't here to hurt him. I just came  
09:15AM 12 to talk to him.

09:15AM 13 Q You told us that you had a friendly relationship with  
09:15AM 14 Mr. Lapenya, right?

09:15AM 15 A Yes.

09:15AM 16 Q Okay, so why would that even be necessary; why would you  
09:15AM 17 even say that, that you are not here to hurt him?

09:15AM 18 A Because of Mike's reputation.

09:15AM 19 Q And what do you mean by that?

09:15AM 20 A I mean, I'm sure Mark --

09:15AM 21 Q Well, without assuming anything from Mark Lapenya, just by  
09:15AM 22 you, what do you mean by reputation?

09:15AM 23 A I mean that Mike has a reputation that if he doesn't get  
09:16AM 24 what he wants, violence could follow.

09:16AM 25 Q And when you went to go see Mr. Lapenya, did you have any

09:16AM 1 weapons with you?

09:16AM 2 A I did not.

09:16AM 3 Q Did you make any threats saying that something bad would  
09:16AM 4 happen?

09:16AM 5 A No.

09:16AM 6 Q How did that conversation end?

09:16AM 7 A That conversation ended with Mark deciding that he didn't  
09:16AM 8 want anything to do with us.

09:16AM 9 Q Did you have any other interaction with this topic of  
09:16AM 10 trying to get Mr. Lapenya back to work for the defendant?

09:16AM 11 A When I got back to the office, somebody had called me. I  
09:16AM 12 didn't know who that person was, but he said to leave Mark  
09:16AM 13 alone; don't bother him because he works for me now.

09:16AM 14 Q And that was a message for you?

09:16AM 15 A Yes, that was a direct phone call from somebody, Mark's  
09:17AM 16 new employer.

09:17AM 17 Q Do you recall anything about that person's name?

09:17AM 18 A I believe his first name was Michael.

09:17AM 19 Q Anything about his last name?

09:17AM 20 A It was a Caucasian last name.

09:17AM 21 Q Do you know a person who is named Caleb Miske?

09:17AM 22 A Yes.

09:17AM 23 Q Who is that?

09:17AM 24 A That's Mike's son.

09:17AM 25 Q I'm going to direct your attention to November of 2015.

09:17AM 1 Did any events to your knowledge occur relating to  
09:17AM 2 Caleb Miske?  
09:17AM 3 A Caleb had gotten into a bad accident.  
09:17AM 4 Q What type of accident?  
09:17AM 5 A Car accident.  
09:17AM 6 Q And after the car accident occurred, when did you learn  
09:17AM 7 about it?  
09:17AM 8 A That evening or the following day.  
09:18AM 9 Q And did you go anywhere?  
09:18AM 10 A Yes. I went to the hospital.  
09:18AM 11 Q At that hospital, who was there?  
09:18AM 12 A Family members. Mike.  
09:18AM 13 Q Was Caleb there also?  
09:18AM 14 A Yes.  
09:18AM 15 Q During that time when you went to the hospital, did you  
09:18AM 16 hear any conversations relating to who the driver of the  
09:18AM 17 vehicle was?  
09:18AM 18 MR. KENNEDY: Objection on hearsay, Your Honor.  
09:18AM 19 THE COURT: Overruled.  
09:18AM 20 MR. AKINA: It's a yes or no question.  
09:18AM 21 THE WITNESS: Can you repeat that question?  
09:18AM 22 BY MR. AKINA:  
09:18AM 23 Q Did you hear any conversations relating to who the diver  
09:18AM 24 was?  
09:18AM 25 A Yes.

09:18AM 1 Q And who was involved in that conversation?

09:18AM 2 A Mike and -- I'm sorry, Kaulana's brother. I forgot his

09:18AM 3 name.

09:18AM 4 Q Who is Kaulana?

09:18AM 5 A Kaulana is Mike's cousin, Freitas.

09:19AM 6 Q This was a conversation between Kaulana's brother and the

09:19AM 7 defendant?

09:19AM 8 A Yes.

09:19AM 9 Q And where did that conversation take place?

09:19AM 10 A In the waiting room.

09:19AM 11 Q And what was said in that conversation?

09:19AM 12 A That he had said Kaulana's brother came down or came into

09:19AM 13 the room and had said that Caleb was driving.

09:19AM 14 Q And what did the defendant say?

09:19AM 15 A He got upset at that person, at Kaulana's brother.

09:19AM 16 Q Did the defendant say anything?

09:19AM 17 A I don't know exactly what he said, but it was along the

09:19AM 18 lines of like, "shut the fuck up."

09:19AM 19 Q Do you know who Jonathan Fraser was?

09:19AM 20 A Yes.

09:19AM 21 Q Who was that?

09:20AM 22 A That was Caleb's friend.

09:20AM 23 Q And ultimately what happened to Caleb Miske?

09:20AM 24 A He passed away.

09:20AM 25 Q Was there a funeral after he passed away, eventually?



09:20AM 1 A Yes.

09:20AM 2 Q And did you go to Caleb's funeral?

09:20AM 3 A I did go to Caleb's funeral.

09:20AM 4 Q Was anything planned after the funeral?

09:20AM 5 A Yes. They were going to scatter his ashes.

09:20AM 6 Q Did you go to the ash-scattering ceremony?

09:20AM 7 A No, I did not.

09:20AM 8 Q Do you know if it took place?

09:20AM 9 A Yes.

09:20AM 10 Q How do you know that?

09:20AM 11 A Because I seen pictures of it, and then I heard from

09:20AM 12 people that it happened.

09:20AM 13 Q Did you hear from the defendant about that?

09:20AM 14 A Yes.

09:20AM 15 Q Where were the ashes scattered?

09:20AM 16 A Maunalua Bay.

09:20AM 17 Q Where is that located?

09:20AM 18 A In east Oahu.

09:21AM 19 Q Following Caleb's funeral, did you ever go to Maunalua Bay

09:21AM 20 later on?

09:21AM 21 A Yes.

09:21AM 22 Q Tell me about that.

09:21AM 23 A We went to Maunalua Bay every Friday after the passing.

09:21AM 24 Q When you say we, who is we?

09:21AM 25 A Mike, his family, myself, other friends.

09:21AM 1 Q And how would you characterize the relationship between  
09:21AM 2 the defendant and those other friends who aren't family? Were  
09:21AM 3 they strangers?

09:21AM 4 A No. They were close friends also.

09:21AM 5 Q Who were some of the people that you would see regularly  
09:21AM 6 at Maunalua Bay?

09:21AM 7 A I would regularly see Mike's mom, John Stancil, Andy,  
09:22AM 8 Delia, those were the ones that -- Kaulana.

09:22AM 9 Q Any other nonfamily members?

09:22AM 10 A Nonfamily -- not all the time.

09:22AM 11 Q Is that all the people that you've ever seen there or  
09:22AM 12 would other people come on occasion?

09:22AM 13 A Yeah, there would be other people that came on other  
09:22AM 14 occasions.

09:22AM 15 Q Who are some of those people?

09:22AM 16 A Other people would come, would be our friend Nate, Nate  
09:22AM 17 Terelle, Russell.

09:22AM 18 Q Do you know his last name?

09:22AM 19 A Moscato and his family.

09:22AM 20 Q You mentioned the mom. Who is the mom?

09:22AM 21 A Dina, Madine Stancil.

09:22AM 22 Q Madine Stancil. And you mentioned Andy. Do you know her  
09:23AM 23 last name?

09:23AM 24 A Kaneakua.

09:23AM 25 Q You said Delia. Are you referring to Delia Fabro-Miske?

09:23AM 1 A Yes.

09:23AM 2 Q And what would happen on Fridays when you guys went to  
09:23AM 3 Maunalua Bay?

09:23AM 4 A We would hang out, eat dinner there, and then we would  
09:23AM 5 spread flowers.

09:23AM 6 Q For what purpose?

09:23AM 7 A We would spread flowers where Caleb's ashes were spread.

09:23AM 8 Q And this was every Friday.

09:23AM 9 Would it be during the day, people would just take off  
09:23AM 10 from work on Friday?

09:23AM 11 A No. It would be towards the late afternoon hours.

09:23AM 12 Q And how frequently would people go there?

09:23AM 13 A We would go every Friday.

09:23AM 14 MR. AKINA: Could we show the witness Exhibit 1-1022,  
09:24AM 15 please?

09:24AM 16 BY MR. AKINA:

09:24AM 17 Q Do you recognize what this shows?

09:24AM 18 A Yes.

09:24AM 19 Q What does this show?

09:24AM 20 A This shows the picture of the bay and the surrounding  
09:24AM 21 areas.

09:24AM 22 Q Is this a fair and accurate map showing that location of  
09:24AM 23 the bay in relation to the island?

09:24AM 24 A Yes.

09:24AM 25 MR. AKINA: I would offer 1-1022 into evidence.

09:24AM 1 MR. KENNEDY: No objection, Your Honor.

09:24AM 2 THE COURT: Without objection, Exhibit 1-1022 is

09:24AM 3 admitted.

09:24AM 4 (Exhibit 1-1022 was received in evidence.)

09:24AM 5 MR. AKINA: And if we could show the witness 1-1023,

09:24AM 6 please.

09:24AM 7 BY MR. AKINA:

09:24AM 8 Q What does this show?

09:24AM 9 A This shows the area that we went to every Friday.

09:24AM 10 Q Do you mean the area at Maunalua Bay?

09:24AM 11 A Yes, the area at Maunalua Bay.

09:24AM 12 Q Is this a fair and accurate overhead view of that area?

09:25AM 13 A Yes.

09:25AM 14 MR. AKINA: I would offer 1-1023 into evidence.

09:25AM 15 MR. KENNEDY: No objection, Your Honor.

09:25AM 16 THE COURT: Again, without objection, 1-1023 is

09:25AM 17 admitted. You may publish.

09:25AM 18 (Exhibit 1-1023 was received in evidence.)

09:25AM 19 BY MR. AKINA:

09:25AM 20 Q If we could show 1-1022.

09:25AM 21 Do you see -- what is that long highway that's

09:25AM 22 stretching from left to right?

09:25AM 23 A Kalaniana'ole Highway.

09:25AM 24 Q If we could first zoom in on this first half. What does

09:25AM 25 this show?

09:25AM 1 A That shows the parking lot to Maunalua Bay.

09:25AM 2 Q If we could zoom out of here. If we could zoom in on this  
09:26AM 3 area off to the right.

09:26AM 4 What area is that, that we zoomed in on?

09:26AM 5 A That is the area that we would hang out in.

09:26AM 6 Q That's the area next to Maunalua Bay beach, that's written  
09:26AM 7 Maunalua Bay beach on this map?

09:26AM 8 A Yes.

09:26AM 9 Q Could we go to 1-023, please.

09:26AM 10 THE COURT: 1-1023?

09:26AM 11 MR. AKINA: 1-1023. Thank you, Your Honor.

09:26AM 12 BY MR. AKINA:

09:26AM 13 Q And this is that close up of the area where everyone would  
09:26AM 14 hang out on Fridays?

09:26AM 15 A Yes.

09:26AM 16 Q You see the parking lot on the top left corner?

09:27AM 17 A Yes.

09:27AM 18 Q Would you guys park there?

09:27AM 19 A Yes.

09:27AM 20 Q And where would you actually hang out, typically?

09:27AM 21 A Um --

09:27AM 22 Q You can use your finger if that helps to draw it.

09:27AM 23 Okay, so the area sort of in front of between the  
09:27AM 24 parking lot and the beach?

09:27AM 25 A Yes.

09:27AM 1 Q Do you know someone named Ashley Wong?

09:27AM 2 A Yes.

09:27AM 3 Q Who is she?

09:27AM 4 A That's Jonathan Fraser's girlfriend.

09:27AM 5 Q Have you met her before?

09:27AM 6 A Yes, I met her a few times.

09:27AM 7 Q What was the first time that you met her?

09:27AM 8 A The first time I met her was when Mike had asked me to  
09:27AM 9 help someone get a safety check from O'Sungs.

09:28AM 10 Q And in relation to when Caleb had passed way, when did  
09:28AM 11 that take place? Before or after?

09:28AM 12 A This was after.

09:28AM 13 Q You mentioned O'Sung. What is O'Sung again?

09:28AM 14 A That's the auto body shop that we used to take our  
09:28AM 15 vehicles to get fixed at.

09:28AM 16 Q So Mike had you go down there and help Ashley Wong do  
09:28AM 17 what?

09:28AM 18 A To get a safety check for her vehicle.

09:28AM 19 Q Do you recall what type of vehicle that was?

09:28AM 20 A It was a hatchback -- a dark colored hatchback.

09:28AM 21 MR. AKINA: Could we show the witness Exhibit 2-48  
09:28AM 22 please.

09:28AM 23 THE COURT: You may.

09:28AM 24 BY MR. AKINA:

09:28AM 25 Q Do you recognize what's shown here?

09:28AM 1 A Yes.

09:28AM 2 Q What is this?

09:28AM 3 A This is the vehicle that Ashley needed the safety check  
09:29AM 4 for.

09:29AM 5 Q Is it a fair and accurate picture of the vehicle you  
09:29AM 6 helped her with?

09:29AM 7 A Yes.

09:29AM 8 MR. AKINA: I'd offer this Exhibit 2-48 into evidence.

09:29AM 9 MR. KENNEDY: No objection.

09:29AM 10 THE COURT: Without objection, Exhibit 2-48 is  
09:29AM 11 admitted.

09:29AM 12 (Exhibit 2-48 was received in evidence.)

09:29AM 13 MR. AKINA: Could we have permission to publish, Your  
09:29AM 14 Honor?

09:29AM 15 THE COURT: Yes.

09:29AM 16 BY MR. AKINA:

09:29AM 17 Q You said this is a two-door hatchback?

09:29AM 18 A Yes, I said it was a hatchback.

09:29AM 19 Q And it's dark in color, right?

09:29AM 20 A Correct.

09:29AM 21 Q Did you meet Ashley Wong a second time?

09:29AM 22 A I didn't meet her, but I was present when she was there.

09:30AM 23 Q Tell us about that.

09:30AM 24 A This was after the disappearance of Jonathan Fraser, when  
09:30AM 25 she and her father were picking up her things from Delia's

09:30AM 1 townhouse.

09:30AM 2 Q About how long after Jonathan Fraser disappeared did this  
09:30AM 3 take place?

09:30AM 4 A The following week.

09:30AM 5 Q And why were you at this residence?

09:30AM 6 A Mike had asked me to accompany Delia and to make sure that  
09:30AM 7 nothing happened when Ashley and her father were cleaning out  
09:30AM 8 her belongings.

09:30AM 9 Q So what was the purpose of you accompanying Delia  
09:30AM 10 Fabro-Miske?

09:30AM 11 A To make sure that she was safe and nothing happened to  
09:30AM 12 her.

09:30AM 13 Q What do you mean nothing happening to her?

09:31AM 14 A That Ashley's father didn't say anything to upset Delia or  
09:31AM 15 things along that nature.

09:31AM 16 Q Were you there for protection?

09:31AM 17 A Yes.

09:31AM 18 Q And so, where was this residence?

09:31AM 19 A In Hawaii Kai.

09:31AM 20 Q I'm sorry, I spoke over you.

09:31AM 21 A In Hawaii Kai.

09:31AM 22 Q And when you got to the residence, what was happening, or  
09:31AM 23 generally what happened when you were there?

09:31AM 24 A When I was there, I didn't see what was happening but I  
09:31AM 25 was in the kitchen area, and the room that she was cleaning out



09:31AM 1 was towards the front door.

09:31AM 2 Q When you say she, who is she?

09:31AM 3 A Ashley.

09:31AM 4 Q Now, did you have any personal involvement with Jonathan  
09:31AM 5 Fraser's disappearance?

09:31AM 6 A No.

09:31AM 7 Q And how did you learn about Jonathan Fraser's  
09:32AM 8 disappearance?

09:32AM 9 A From seeing it on the news.

09:32AM 10 Q Do you remember what day of the week that was?

09:32AM 11 A Saturday.

09:32AM 12 Q Did you see the defendant after that?

09:32AM 13 A I saw Mike the following Monday.

09:32AM 14 Q And where was that?

09:32AM 15 A That was in his office at Kama'aina Termite and Pest  
09:32AM 16 Control.

09:32AM 17 Q Did the defendant say anything relating to Jonathan  
09:32AM 18 Fraser's disappearance that day to you?

09:32AM 19 A So I was in his office that afternoon, and -- like we  
09:32AM 20 normally are, and he came and stand in front of me and he said  
09:32AM 21 to me that -- he said, "You didn't think anything wasn't going  
09:32AM 22 to happen?"

09:33AM 23 Q Did you ask the defendant specifically, "What are you  
09:33AM 24 talking about?"

09:33AM 25 A No, I did not ask Mike what he was talking about.

09:33AM 1 Q Why not?

09:33AM 2 A Because that wasn't -- I didn't want to know more and  
09:33AM 3 that's not something that he would probably elaborate on.

09:33AM 4 Q Why did you think that that was in reference to Jonathan  
09:33AM 5 Fraser?

09:33AM 6 A Because it just happened on Saturday, and I don't know  
09:33AM 7 what else he would be talking about.

09:33AM 8 Q And at the time, you had been working for the defendant  
09:33AM 9 for a few years?

09:33AM 10 A Yes.

09:33AM 11 Q And at this time, were you pretty aware of what was going  
09:33AM 12 on with the different companies that you had involvement in?

09:33AM 13 A Yes.

09:33AM 14 Q And did you have regular interaction with the defendant  
09:33AM 15 around that time?

09:33AM 16 A Yes.

09:34AM 17 Q So as far as you knew, was there anything else that that  
09:34AM 18 statement could have possibly referred to?

09:34AM 19 A No.

09:34AM 20 Q You said that you didn't want to know more.

09:34AM 21 What do you mean by that?

09:34AM 22 A Like, I didn't want the responsibility of holding any kind  
09:34AM 23 of secret.

09:34AM 24 Q Why not?

09:34AM 25 A Because that could be, like, that would be like a witness

09:34AM 1 to what he had said --

09:34AM 2 Q And why did you not want to become a witness to what the  
09:34AM 3 defendant said?

09:34AM 4 A Because we all knew what would happen if it was to come  
09:34AM 5 out that -- that you knew something about what happened.

09:34AM 6 Q What do you mean by that?

09:34AM 7 A With Jonathan. Like, we -- like, I didn't want to be  
09:34AM 8 associated with knowing what happened to Jonathan Fraser.

09:35AM 9 Q Did you have any suspicions at the time, though, relating  
09:35AM 10 to Jonathan Fraser based on that statement? Let me ask you in  
09:35AM 11 a different way.

09:35AM 12 After you heard that statement by the defendant, did  
09:35AM 13 you go to the police?

09:35AM 14 A No, I did not.

09:35AM 15 Q Did you tell Ashley Wong? You had met her once before.

09:35AM 16 A No, I did not.

09:35AM 17 Q Did you tell Jonathan Fraser's family that someone might  
09:35AM 18 have information?

09:35AM 19 A No, I did not.

09:35AM 20 Q Why not?

09:35AM 21 A Because I was afraid.

09:35AM 22 Q What do you mean by that?

09:35AM 23 A I was afraid that -- I was afraid for retaliation from  
09:35AM 24 Mike if I said something.

09:35AM 25 Q At that point in time, did you feel any loyalty to the

09:35AM 1 defendant?

09:35AM 2 A Yes.

09:35AM 3 Q Did that have any role in your decision not to talk to  
09:35AM 4 people?

09:36AM 5 A Yes.

09:36AM 6 Q Explain that.

09:36AM 7 A We were close. We were like family at that time.

09:36AM 8 Q Since you learned of Jonathan Fraser's disappearance, have  
09:36AM 9 you seen him?

09:36AM 10 A No, I have not seen him.

09:36AM 11 Q Do you know an individual named Michael Char?

09:36AM 12 A I've never met Michael Char, but I've heard his name.

09:36AM 13 Q You've heard his name.

09:36AM 14 Who have you heard his name from?

09:36AM 15 A I heard his name from Mike.

09:36AM 16 Q The defendant?

09:36AM 17 A Yes.

09:36AM 18 Q And based on what you've heard from the defendant, are you  
09:36AM 19 aware of their relationship, what type of relationship they  
09:36AM 20 had?

09:36AM 21 A No.

09:36AM 22 Q I'm going to direct your attention to May of 2016.

09:36AM 23 Did you ever discuss Mr. Char with the defendant?

09:37AM 24 A I don't know if that was the date that Mike had brought  
09:37AM 25 his name up to me.

09:37AM 1 Q Okay. What do you recall of any day that it was brought  
09:37AM 2 up to you?

09:37AM 3 A I recall that Mike was leaving for a trip. But while he  
09:37AM 4 was getting ready to leave, somebody -- he told me that  
09:37AM 5 somebody was calling his name from outside of his house, his  
09:37AM 6 residence in Kailua. And when he went to go see what the  
09:37AM 7 person was calling him about, I guess Mike Char told Mike that  
09:37AM 8 he had been robbed.

09:37AM 9 Q So the defendant relayed to you that Mike Char had come to  
09:37AM 10 his home yelling at him?

09:37AM 11 A Not yelling at him, but calling his name.

09:37AM 12 Q Okay, and told the defendant that Mike Char had been  
09:37AM 13 robbed?

09:37AM 14 A Yes.

09:37AM 15 Q And did the defendant tell you anything else about this?

09:38AM 16 A He said that Mike Char suspected that it was Kaulana  
09:38AM 17 Freitas and John Stancil that robbed him at the Bay -- at  
09:38AM 18 Maunalua Bay.

09:38AM 19 Q And what did the defendant say what he did, if anything?

09:38AM 20 A The defendant said that he met Kaulana Freitas and John  
09:38AM 21 Stancil at the bay parking lot and that he had slapped him, and  
09:38AM 22 I guess bent Kaulana's doors back, cracked all his windows.

09:38AM 23 Q And was this conversation that you had with the defendant,  
09:38AM 24 was that before or after Caleb Miske had passed away?

09:38AM 25 A This was after.

09:38AM 1 Q And what was the defendant's demeanor when he was telling  
09:38AM 2 you what happened regarding all of this with Mr. Char?

09:38AM 3 A His demeanor was -- he was animated but it wasn't -- he  
09:39AM 4 was upset also that they did -- they robbed this person at the  
09:39AM 5 Bay because the Bay was sacred to us. Nothing bad was supposed  
09:39AM 6 to happen over there, especially not somebody getting robbed,  
09:39AM 7 because that's where our families would go and hang out.

09:39AM 8 And we didn't want -- Mike didn't want any kind of  
09:39AM 9 retaliation coming back to the Bay because of what happened.

09:39AM 10 Q Did the defendant give you any directions during this  
09:39AM 11 conversation?

09:39AM 12 A Yes. He said to stay away from -- don't answer Kaulana  
09:39AM 13 and Johnnie's texts and stay away from them.

09:39AM 14 Q Is that the only time that he told you not to -- you know,  
09:39AM 15 to stop having contact with people?

09:39AM 16 A No, that wasn't the only time.

09:39AM 17 Q And when the defendant tells you to do something like  
09:40AM 18 that, to stop having contact with people, what was the purpose?

09:40AM 19 A To just, I guess, punish them for what they had done.

09:40AM 20 Q Do you know an individual named Jason Yokoyama?

09:40AM 21 A Yes.

09:40AM 22 Q Who is he?

09:40AM 23 A Jason was a friend to Mike.

09:40AM 24 Q Did he have any -- what type of relationship did he have  
09:40AM 25 with the defendant?

09:40AM 1 A I knew that he used to work for Mike, and they also had a  
09:40AM 2 close relationship.

09:40AM 3 Q What type of work did Jason Yokoyama do?

09:40AM 4 A Jason bought and sold cars at the auction, and I think he  
09:40AM 5 had a roofing company also.

09:40AM 6 Q Are you familiar with the M Nightclub?

09:40AM 7 A Yes.

09:40AM 8 Q And did that name change at some point?

09:40AM 9 A That name changed when I believe Jason purchased it from  
09:41AM 10 Mike.

09:41AM 11 Q And if there were ever disputes involving Jason Yokoyama,  
09:41AM 12 are you aware of any disputes where the defendant had to  
09:41AM 13 mediate involving Jason Yokoyama and others?

09:41AM 14 A There was one that comes to mind.

09:41AM 15 Q And how did you learn about that?

09:41AM 16 A Because I was there.

09:41AM 17 Q Okay. And what happened?

09:41AM 18 A I guess Jason -- it was New Year's -- it was after New  
09:41AM 19 Year's but it was a new year. I guess another club had posted  
09:41AM 20 something on their Instagram, I guess, saying something about  
09:41AM 21 Encore, and Jason took it as an insult.

09:42AM 22 Q What happened?

09:42AM 23 A So we -- me, Jason and Mike were in the office and we were  
09:42AM 24 just talking story, joking around, and Jason had brought up  
09:42AM 25 that he seen Brian Yoshida a few years earlier wearing his

09:42AM 1 watch that his ex-girlfriend -- that Jason's ex-girlfriend

09:42AM 2 stole from him.

09:42AM 3 Q Who is Brian Yoshida?

09:42AM 4 A Brian Yoshida is partners with -- I guess, business

09:42AM 5 partners with the people that owned the rival nightclub.

09:42AM 6 Q Do you know the name of the rival nightclub?

09:42AM 7 A I don't remember that name.

09:42AM 8 Q And this particular conversation you are talking about

09:43AM 9 where Jason Yokoyama is telling -- who is he telling that

09:43AM 10 information to?

09:43AM 11 A He was telling myself and Mike.

09:43AM 12 Q So it's you, Jason Yokoyama, and the defendant?

09:43AM 13 A Correct.

09:43AM 14 Q And what year did this happen in?

09:43AM 15 A I don't remember.

09:43AM 16 Q Was it before or after Jonathan Fraser disappeared?

09:43AM 17 A I don't remember.

09:43AM 18 Q Okay, so Jason Yokoyama tells this information to the

09:43AM 19 defendant.

09:43AM 20 What happens after he tells him that information?

09:43AM 21 A Then Mike asked him how come he didn't get the watch back,

09:43AM 22 if he saw somebody wearing his watch.

09:43AM 23 Q What else happened during that conversation?

09:43AM 24 A Then Mike got -- Mike got a little upset at Jason for not

09:44AM 25 getting his watch back. So he wanted to speak to Brian



09:44AM 1 Yoshida. So he asked if anybody had Brian's phone number. I  
09:44AM 2 had Brian's phone number, so I gave it to Mike. And Mike  
09:44AM 3 called or -- I don't remember if Mike called him or texted him.  
09:44AM 4 Q And then after you gave that number -- after you gave  
09:44AM 5 Brian Yoshida's phone number to the defendant, at that point in  
09:44AM 6 time, do you know what the defendant was -- did you know what  
09:44AM 7 the defendant was going to do with that number?  
09:44AM 8 A Yes, he was going to get in contact with Brian.  
09:44AM 9 Q And at that point in time, did you know what the defendant  
09:44AM 10 intended to do next?  
09:44AM 11 A I didn't know exactly -- I mean, I thought that he was  
09:44AM 12 going to call him and go ask for Jason's watch back.  
09:44AM 13 Q So what happens next after you give Mr. Yoshida's number  
09:45AM 14 to the defendant?  
09:45AM 15 A Then Brian arrives after. I don't know how long went by  
09:45AM 16 before Brian arrived; less than an hour, he came by the shop.  
09:45AM 17 I let him in to the shop and he went into Mike's office.  
09:45AM 18 Q You say the shop.  
09:45AM 19 This is Kama'aina Termite?  
09:45AM 20 A Yes, that's Kama'aina Termite and Pest Control.  
09:45AM 21 Q Was this during business hours?  
09:45AM 22 A This was after business hours.  
09:45AM 23 Q When you say that you let Mr. Yoshida into the shop, what  
09:45AM 24 did you have to do?  
09:45AM 25 A I had to open the rollup gate for him.

09:45AM 1 Q You open the gate, you let Mr. Yoshida in, where does  
09:45AM 2 Mr. Yoshida go?  
09:45AM 3 A Brian went into Mike's office.  
09:45AM 4 Q That's the one on the first floor?  
09:45AM 5 A Correct.  
09:45AM 6 Q Did you go into that office?  
09:45AM 7 A I did not go into the office.  
09:45AM 8 Q At this point, where was the defendant?  
09:45AM 9 A The defendant was in his office.  
09:45AM 10 Q What happened next?  
09:45AM 11 A Then a few minutes after Brian arrived, Jake Smith  
09:46AM 12 arrived.  
09:46AM 13 Q What does Jake Smith do? Did you talk to Jake Smith?  
09:46AM 14 A We greeted each other, and then I told him that Mike was  
09:46AM 15 in his office.  
09:46AM 16 Q What did Jake Smith do?  
09:46AM 17 A He entered Mike's office.  
09:46AM 18 Q Was anyone else present at Kama'aina Termite at this  
09:46AM 19 point?  
09:46AM 20 A No it was me, Jason, Jake, Mike and Brian.  
09:46AM 21 Q So Jason Yokoyama was also present?  
09:46AM 22 A He was present.  
09:46AM 23 Q And did Jason Yokoyama go into that office -- the  
09:46AM 24 defendant's office?  
09:46AM 25 A Not initially, but he did enter the office after.

09:46AM 1 Q After what?

09:46AM 2 A After about 20 minutes.

09:46AM 3 Q Okay, so let's break this down. So Mr. Yoshida arrives.

09:46AM 4 You let him in. Mr. Yoshida goes to the defendant's office,

09:46AM 5 right?

09:46AM 6 A Yes.

09:46AM 7 Q And then Jake Smith arrives a few minutes later and he

09:47AM 8 goes to the defendant's office?

09:47AM 9 A Yes.

09:47AM 10 Q And at this point, the defendant, Mr. Yoshida, and Jake

09:47AM 11 Smith are in the office?

09:47AM 12 A Yes.

09:47AM 13 Q And you are outside the office?

09:47AM 14 A Me, myself, and Jason Yokoyama are outside the office.

09:47AM 15 Q Okay. What happens next?

09:47AM 16 A What happens next. I don't know how long it was, but I

09:47AM 17 let -- I let Brian Yoshida out of the shop.

09:47AM 18 Q You said you don't know how long it was.

09:47AM 19 Was it seconds, minutes, hours?

09:47AM 20 A No, it was, like, minutes probably, about 20 to

09:47AM 21 30 minutes.

09:47AM 22 Q And did you observe anything of Mr. Yoshida?

09:47AM 23 A Yeah. Brian's face looked like hamburger, like he got

09:47AM 24 beat up.

09:47AM 25 Q Can you describe what you observed?

09:47AM 1 A There was swelling, there was bruising, scratches, red  
09:48AM 2 marks.

09:48AM 3 Q Now, you had let Mr. Yoshida in through the rolling gate.  
09:48AM 4 Did he look like that when he went in?

09:48AM 5 A No, he did not.

09:48AM 6 Q A few minutes later when you let him out, that's what he  
09:48AM 7 looked like?

09:48AM 8 A Yes.

09:48AM 9 Q Did you hear anything from the defendant's office?

09:48AM 10 A I did not hear anything. I was in the office that was  
09:48AM 11 across from Mike's office.

09:48AM 12 Q Did you talk to the defendant after Mr. Yoshida left?

09:48AM 13 A We -- yeah, we all -- after Brian had left, we all was in  
09:48AM 14 the office after Brian left.

09:48AM 15 Q When you say we, who is there?

09:48AM 16 A Myself, Jason Yokoyama, Jake Smith and Mike.

09:49AM 17 Q And what's discussed at that point?

09:49AM 18 A That Brian will have Jason's watch back or replace it  
09:49AM 19 within a week.

09:49AM 20 Q Who said that?

09:49AM 21 A Mike.

09:49AM 22 Q Did you talk to Jason Yokoyama about this afterwards?

09:49AM 23 A I did see him after, and he said that he got the exact  
09:49AM 24 watch back.

09:49AM 25 Q Was that that same day that Jason Yokoyama told you that?

09:49AM 1 A No, I saw him a few days after.

09:49AM 2 Q And did he indicate who he got the watch back from?

09:49AM 3 A He said that Brian brought the watch back to him.

09:49AM 4 MR. AKINA: Could we show the witness Exhibit 1-39  
09:49AM 5 please?

09:49AM 6 THE COURT: You may.

09:49AM 7 BY MR. AKINA:

09:49AM 8 Q Do you recognize this individual?

09:49AM 9 A Yes.

09:49AM 10 Q Who is this?

09:49AM 11 A That's Jason Yokoyama.

09:50AM 12 Q Was this a fair and accurate picture of how Jason Yokoyama  
09:50AM 13 looked back then, during the time that you were working for the  
09:50AM 14 defendant?

09:50AM 15 A Yes.

09:50AM 16 MR. AKINA: I'd offer 1-39 into evidence.

09:50AM 17 MR. KENNEDY: No objection.

09:50AM 18 THE COURT: Without objection, 1-39 is admitted.

09:50AM 19 (Exhibit 1-39 was received in evidence.)

09:50AM 20 MR. AKINA: Permission to publish?

09:50AM 21 THE COURT: Yes.

09:50AM 22 BY MR. AKINA:

09:50AM 23 Q Just for the jury's sake, who is this individual?

09:50AM 24 A Jason Yokoyama.

09:50AM 25 Q During the time that you are working for the defendant,

09:50AM 1 did you become aware through the defendant of any violence or  
09:50AM 2 threats that took place at Kama'aina Termite besides this  
09:50AM 3 incident?

09:50AM 4 A Could you repeat the question?

09:50AM 5 Q Did you learn of any other violence or threats from the  
09:50AM 6 defendant that took place at Kama'aina Termite?

09:50AM 7 A There was another one involving a fumigator who had stolen  
09:51AM 8 something from a customer's house.

09:51AM 9 Q Now, how did you first become aware of this?

09:51AM 10 A It was -- I guess the customer had called saying that they  
09:51AM 11 were missing a ring from their house, and they just had gotten  
09:51AM 12 their tent fumigation -- their tent taken off that day, and  
09:51AM 13 when they went back into check on the ring that they had  
09:51AM 14 hidden, it was gone.

09:51AM 15 Q And did you see that person -- that employee after that?

09:51AM 16 A The person who stole the ring, yes, I did see him come  
09:51AM 17 back to the shop.

09:51AM 18 Q And then what happened? Tell us about the incident that  
09:51AM 19 you know about.

09:51AM 20 A Then when he came back to the shop, he went into Mike's  
09:51AM 21 office alone.

09:51AM 22 Q Did you see the defendant emerge from the office at some  
09:52AM 23 point?

09:52AM 24 A Yes. Mike was in his office.

09:52AM 25 Q Before that, did you see that employee emerge from the

09:52AM 1 office at some point -- the Kama'aina employee?

09:52AM 2 A Yes, I saw him enter Mike's office.

09:52AM 3 Q Did he ever leave?

09:52AM 4 A Yes, he left Mike's office.

09:52AM 5 Q Was anything different about his appearance?

09:52AM 6 A He didn't have his shirt on. He didn't have his company  
09:52AM 7 shirt on.

09:52AM 8 Q Did he have any shirt on?

09:52AM 9 A No, he didn't have any shirt on.

09:52AM 10 Q What did you do after you saw this?

09:52AM 11 A I asked Mike what happened to his shirt.

09:52AM 12 Q And what did the defendant tell you?

09:52AM 13 A Mike said that he used it to blindfold the person.

09:52AM 14 Q Did the defendant explain what happened?

09:52AM 15 A He used it to blindfold the person so that person couldn't  
09:52AM 16 say that Mike assaulted him.

09:52AM 17 Q Did the defendant explain why he did -- generally, why did  
09:52AM 18 he even have to blindfold this person?

09:53AM 19 A So he couldn't -- so that person who got assaulted  
09:53AM 20 couldn't say that, with his own eyes, that Mike was the one  
09:53AM 21 that assaulted him.

09:53AM 22 Q Did the defendant explain about any conversations that he  
09:53AM 23 had with that employee at that time?

09:53AM 24 A He had asked -- he had questioned him about the ring and  
09:53AM 25 he found out what pawn shop that the person pawned the ring at.

09:53AM 1 Q Do you know if that employee continued to work at

09:53AM 2 Kama'aina?

09:53AM 3 A No, that was his last day of employment.

09:53AM 4 Q He got fired?

09:53AM 5 A Yes.

09:53AM 6 Q You testified earlier yesterday about certain messaging

09:53AM 7 apps that would be used to communicate that were encrypted; do

09:53AM 8 you recall that?

09:53AM 9 A Yes.

09:53AM 10 Q And in the conversations that you had through text with

09:54AM 11 the defendant, would there sometimes be group texts as well?

09:54AM 12 A Yes.

09:54AM 13 Q And what, if anything, did the defendant do to sort of

09:54AM 14 control whether -- what was discussed or if -- or did he do

09:54AM 15 anything to control certain topics were continued to be

09:54AM 16 discussed through texts?

09:54AM 17 A If Mike didn't want anything more said in the text, then

09:54AM 18 he would say "kill this text" or "kill the thread."

09:54AM 19 Q Could we show the witness Exhibit 1-565, please. And this

09:54AM 20 is a one-paged document.

09:54AM 21 Do you recognize this?

09:54AM 22 A Yes.

09:54AM 23 Q What is this?

09:54AM 24 A This is a text thread between myself, Michael Miske, Mike

09:55AM 25 Warden, and Angela Varnadore.



09:55AM 1 Q And did this text happen -- do you know what date this  
09:55AM 2 happened on, this particular text was sent?

09:55AM 3 A No, I do not.

09:55AM 4 Q Did it take place during the time that you were working  
09:55AM 5 for the defendant?

09:55AM 6 A Yes.

09:55AM 7 Q Is this a fair and accurate copy of this portion of the  
09:55AM 8 text conversation?

09:55AM 9 A Yes.

09:55AM 10 MR. AKINA: I would offer 1-565 into evidence.

09:55AM 11 THE COURT: Any objection?

09:55AM 12 MR. KENNEDY: No objections.

09:55AM 13 THE COURT: Without objection, 1-565 is admitted.

09:55AM 14 (Exhibit 1-565 was received in evidence.)

09:55AM 15 MR. AKINA: Permission to publish?

09:55AM 16 THE COURT: Yes.

09:55AM 17 BY MR. AKINA:

09:55AM 18 Q Could we focus on the top three bubbles please, and  
09:55AM 19 also -- yes, the people involved.

09:55AM 20 Okay, so the first person, the first name is Angela  
09:55AM 21 that's -- who is Angela?

09:55AM 22 A Angela Varnadore.

09:56AM 23 Q The next person, Preston, that's you?

09:56AM 24 A Yes.

09:56AM 25 Q And Mike is?

09:56AM 1 A Mike Warden.

09:56AM 2 Q You see on the left there is a text from Angela. She says  
09:56AM 3 goodbye.

09:56AM 4 Who is sending the green bubbles?

09:56AM 5 A Mike.

09:56AM 6 Q So there is two Mikes, right? There's Mike Warden --

09:56AM 7 A -- I'm sorry. Mike Miske.

09:56AM 8 Q So the green bubbles are the defendant's?

09:56AM 9 A Yes.

09:56AM 10 Q So that first one, where the defendant says, Mike can you  
09:56AM 11 dial in, is that referring to the other Mike, Mike Warden?

09:56AM 12 A Yes.

09:56AM 13 Q And the second text, who is that directed towards?

09:56AM 14 A That's directed towards Angela.

09:56AM 15 Q If we go down to the rest of the other messages, Mike

09:57AM 16 Warden says, "okay, I'm signing on." And the defendant

09:57AM 17 says texts -- "kill this text. Preston, have Curtis kill all  
09:57AM 18 Angela's emails right fucking now."

09:57AM 19 What's going on here?

09:57AM 20 A Mike is telling me to contact Curtis, who is in charge of  
09:57AM 21 all the, I guess, emails. And he is asking me -- well, he is  
09:57AM 22 saying "kill this text," so stop writing in this text, and  
09:57AM 23 contact Curtis to change Angela's, I guess, passwords.

09:57AM 24 Q Do you know what was happening at that point in time  
09:57AM 25 between Angela Varnadore and the defendant?

09:57AM 1 A No, I do not know what was happening.

09:57AM 2 Q Is this typical of how the defendant would end  
09:57AM 3 conversations and control what was discussed?

09:57AM 4 A Yes.

09:57AM 5 Q So focusing you on 2017, did you ever assist the defendant  
09:58AM 6 in making payments to workers?

09:58AM 7 A In 2017?

09:58AM 8 Q I'll ask it a different way. You told us that you would,  
09:58AM 9 on occasion, make cash payments to Michael Masutani and your  
09:58AM 10 brother Devin Kimoto.

09:58AM 11 Did you make cash payments to anybody else on behalf  
09:58AM 12 of the defendant?

09:58AM 13 A I made cash payments to Angela Varnadore, and I observed  
09:58AM 14 cash payments being made to employees at the project, the  
09:58AM 15 construction project on Mike's house, and also, the fishing  
09:58AM 16 boat, *The Rachel*.

09:58AM 17 Q With Mike's house, you mentioned that. Where was that  
09:59AM 18 located?

09:59AM 19 A In east Oahu.

09:59AM 20 Q East Oahu?

09:59AM 21 A Yes, correct. In the Portlock area.

09:59AM 22 Q Do you recall the street name?

09:59AM 23 A Lumahai.

09:59AM 24 Q And what involvement, if anything, did you have in cash  
09:59AM 25 payments for there?

09:59AM 1 A I dropped off the weekly payments to the workers that  
09:59AM 2 worked on the project.

09:59AM 3 Q And the project was -- what's the project?

09:59AM 4 A That was Mike's house, 6 Lumahai.

09:59AM 5 Q Was the house being built?

09:59AM 6 A Yes.

09:59AM 7 Q So weekly you would drop off these cash payments to  
09:59AM 8 workers there.

09:59AM 9 Who would you give the cash payments to?

09:59AM 10 A John Lauro.

09:59AM 11 Q And what would John Lauro do?

09:59AM 12 A John Lauro would pay -- I mean, pass out the envelopes to  
09:59AM 13 the individual workers.

09:59AM 14 Q Did you have any role in preparing these cash payments  
09:59AM 15 before they were delivered to John Lauro?

09:59AM 16 A Yes. I helped Tia sometimes count it and double count it  
10:00AM 17 to make sure that it was the correct payment.

10:00AM 18 Q And when you counted it out, how was it divided, if at  
10:00AM 19 all?

10:00AM 20 A It was divided into envelopes with people's names on it  
10:00AM 21 and how many hours they had worked.

10:00AM 22 Q So for each worker, they would have a different envelope?

10:00AM 23 A Correct.

10:00AM 24 Q And the money would go in the envelope?

10:00AM 25 A Yes.

10:00AM 1 Q When you were counting out payments, were they to the  
10:00AM 2 cents or were they nice round flat numbers?  
10:00AM 3 A They were nice round flat numbers.  
10:00AM 4 Q Can you give examples?  
10:00AM 5 A Like if somebody got paid \$300 a day for their work and  
10:00AM 6 they worked five days, it would be 1500.  
10:00AM 7 Q From what you could tell, did it appear that taxes were  
10:00AM 8 taken into account?  
10:00AM 9 A No.  
10:00AM 10 Q And when you made these weekly payments, each weekly, I  
10:00AM 11 guess, bundle of payments that you would drop off,  
10:01AM 12 approximately how much money would that be each week?  
10:01AM 13 A I mean, like, 20, 30,000. I didn't do it weekly, but I  
10:01AM 14 did it only when people couldn't make it.  
10:01AM 15 Q The payments that you dropped off, what was your  
10:01AM 16 understanding -- because earlier you said weekly payments.  
10:01AM 17 So was it your understanding that the payments you  
10:01AM 18 dropped off was for a week's worth of work?  
10:01AM 19 A Yes, a week's worth of work for the workers that were  
10:01AM 20 working on the project.  
10:01AM 21 Q And when you provided the envelopes, did you just give a  
10:01AM 22 bunch of loose envelopes to Mr. Lauro?  
10:01AM 23 A No it was in one bag and the loose envelopes were in that  
10:01AM 24 bag.  
10:01AM 25 Q And you would give that bag to Mr. Lauro?

10:01AM 1 A Correct.

10:01AM 2 Q You mentioned the fishing vessel *Rachel*. Tell us about  
10:01AM 3 that?

10:01AM 4 A I accompanied Delia to drop off the payment for the deck  
10:02AM 5 hands of the vessel.

10:02AM 6 Q And was the payments, were they divided similarly to  
10:02AM 7 payments for the workers at the Lumahai house?

10:02AM 8 A Yes.

10:02AM 9 Q Did you have any -- did you observe how those were broken  
10:02AM 10 down, the cash payments?

10:02AM 11 A They were broken down into -- it wasn't a set amount. It  
10:02AM 12 was whatever they got paid from the fishing auction. Each deck  
10:02AM 13 hand would get anywhere from half a percent to one and a half,  
10:02AM 14 two percent of the total catch. And then it got handed out  
10:02AM 15 accordingly.

10:02AM 16 Q Did you ever observe cash payments being received by the  
10:02AM 17 defendant?

10:02AM 18 A Yes.

10:03AM 19 Q What did you observe?

10:03AM 20 A I observed Jason dropping off cash payments to Mike.

10:03AM 21 Q This is Jason Yokoyama?

10:03AM 22 A Yes, Jason Yokoyama.

10:03AM 23 Q And what were these payments for?

10:03AM 24 A These payments were for, I guess, the remaining portion of  
10:03AM 25 what he owed for the club, from purchasing the club from from

10:03AM 1 Mike.

10:03AM 2 Q That was the Encore?

10:03AM 3 A Yes.

10:03AM 4 Q And when would Jason Yokoyama come to drop off these  
10:03AM 5 payments?

10:03AM 6 A Normally Fridays.

10:03AM 7 Q Where would the payments be made at? Where would he go  
10:03AM 8 to?

10:03AM 9 A I mean, normally, wherever was convenient for himself and  
10:03AM 10 Mike, but on a few occasions when I had to pick it up, we met  
10:03AM 11 at the shop.

10:03AM 12 Q And how frequently were these payments made?

10:03AM 13 A Weekly.

10:03AM 14 Q Approximately how much was dropped off each week?

10:03AM 15 A I don't know approximately how much, but from what I  
10:03AM 16 picked up, it was like 10,000.

10:04AM 17 Q And was that in cash or check or some other form?

10:04AM 18 A In cash.

10:04AM 19 Q And the times that you picked up payments from  
10:04AM 20 Mr. Yokoyama, what did you do with that cash?

10:04AM 21 A I gave it to Mike.

10:04AM 22 Q How would you give it to the defendant?

10:04AM 23 A When I met him at the bay.

10:04AM 24 Q Familiar with an individual -- are you familiar with an  
10:04AM 25 individual named Allen Lau?

10:04AM 1 A Yes.

10:04AM 2 Q Who is Allen Lau?

10:04AM 3 A That's Mike's cousin.

10:04AM 4 Q And did Allen Lau work for any of the defendant's  
10:04AM 5 companies?

10:04AM 6 A He worked for Kama'aina Plumbing.

10:04AM 7 Q Did you do any business with Allen Lau?

10:04AM 8 A Yeah. I referred customers to Allen Lau. And also, we  
10:05AM 9 sold marijuana vape pens on a few occasions.

10:05AM 10 Q What is a marijuana vape pen?

10:05AM 11 A It's a pen that you, I guess, vape with, that has  
10:05AM 12 marijuana oil in it.

10:05AM 13 Q Did you ever talk to the defendant about you selling  
10:05AM 14 marijuana vape pens?

10:05AM 15 A Yes.

10:05AM 16 Q And what did the defendant tell you, if anything?

10:05AM 17 A Mike just told me to stop wasting my time doing that.

10:05AM 18 Q Did he give you any other advice on that?

10:05AM 19 A He didn't want -- well, I told him that the person that I  
10:05AM 20 sold it to asked questions -- a lot of questions about him. So  
10:05AM 21 he didn't want me to continue to associate or sell him  
10:05AM 22 anything.

10:06AM 23 Q To your knowledge, was the defendant aware that Allen Lau  
10:06AM 24 also sold marijuana vape pens?

10:06AM 25 A Yes, he knew that Allen -- I told him that I got the vape



10:06AM 1 pens from Allen. Allen made the vape pens, and I just had  
10:06AM 2 somebody who bought it.

10:06AM 3 Q Are you familiar with an individual named Chris Bourne?

10:06AM 4 A Yes.

10:06AM 5 Q How do you know about Chris Bourne?

10:06AM 6 A I met Chris on one occasion at the shopping mall when me  
10:06AM 7 and Mike were Christmas shopping.

10:06AM 8 Q And tell us what happened during that interaction?

10:06AM 9 A Mike introduced me -- well, we ran into Chris. Mike  
10:06AM 10 introduced me. I walked away to give them privacy to talk.

10:06AM 11 And then when me and Mike met back up after he talked to Chris,  
10:07AM 12 then he said that that's the person that he sent Miller to, I  
10:07AM 13 guess, rob, or they wanted to tax him.

10:07AM 14 Q What is taxing? What does that mean?

10:07AM 15 A Extort, rob.

10:07AM 16 Q And he mentioned Miller. So the defendant sent Miller?  
10:07AM 17 Who is that?

10:07AM 18 A Wayne Miller.

10:07AM 19 Q Did the defendant say anything else on that topic?

10:07AM 20 A No, he didn't.

10:07AM 21 Q And when -- in relation to after Mr. Bourne left, after he  
10:07AM 22 stopped talking to the defendant at the mall -- when did the  
10:07AM 23 defendant tell you about what he wanted Wayne Miller to do?

10:07AM 24 A Just a few seconds.

10:07AM 25 Q So right after Chris Bourne had walked away?

10:07AM 1 A Yes.

10:07AM 2 Q Do you know who an individual is by the name of Jason

10:08AM 3 Smith?

10:08AM 4 A Yes. I've heard his name, but I've never met Jason

10:08AM 5 before -- Jason Smith before.

10:08AM 6 Q How did you hear about his name?

10:08AM 7 A Mike had mentioned to me that that's who he was texting

10:08AM 8 one evening when he was using my phone.

10:08AM 9 Q So this evening, where did that take place?

10:08AM 10 A It was Friday and we were at the Bay.

10:08AM 11 Q So Friday you are at the Bay, and the defendant was using

10:08AM 12 your phone?

10:08AM 13 A Yes, he asked to use my phone.

10:08AM 14 Q And the defendant takes your phone.

10:08AM 15 Does he give it back to you?

10:08AM 16 A Yes, he does give it back to me.

10:08AM 17 Q And then what happened?

10:08AM 18 A I just looked down at the text thread and just asked him

10:08AM 19 who he was -- who is this that he was texting.

10:08AM 20 Q And what did the defendant tell you?

10:08AM 21 A He said it was Jason Smith.

10:08AM 22 BY MR. AKINA:

10:09AM 23 Q Could we show the witness Exhibit 1-1076, please. And

10:09AM 24 this is also a one paged document. If we could focus on the

10:09AM 25 top one, yes.

10:09AM 1 Do you see that phone number at the top?

10:09AM 2 A Yes.

10:09AM 3 Q Whose phone number is that?

10:09AM 4 A That is my phone number.

10:09AM 5 Q And if we could zoom out of this.

10:09AM 6 Do you recognize what these text messages are?

10:09AM 7 A Yes, I recognize these text messages.

10:09AM 8 Q What are these text messages?

10:09AM 9 A This is Mike texting Jason Smith.

10:09AM 10 Q This is from that night that you were telling us, at the

10:09AM 11 bay?

10:09AM 12 A Yes.

10:09AM 13 Q Is this a fair and accurate copy of messages that were

10:09AM 14 sent between the defendant using your phone and the individual

10:10AM 15 he identified as Jason Smith?

10:10AM 16 A Yes.

10:10AM 17 MR. AKINA: I would offer Exhibit 1-1076 into

10:10AM 18 evidence.

10:10AM 19 MR. KENNEDY: No objection.

10:10AM 20 THE COURT: Without objection, Exhibit 1-1076 is

10:10AM 21 admitted.

10:10AM 22 (Exhibit 1-1076 was received in evidence.)

10:10AM 23 THE COURT: Mr. Akina, if you would give some thought

10:10AM 24 to stopping at an appropriate time for our morning break.

10:10AM 25 MR. AKINA: I can stop now, or I can finish with

10:10AM 1 this --

10:10AM 2 THE COURT: Why don't you finish with this line, and  
10:10AM 3 then we will take a break.

10:10AM 4 MR. AKINA: Okay. Thank you, Your Honor. If we could  
10:10AM 5 publish. If we could zoom in on the top box, that phone number  
10:10AM 6 at the top ending in 2822.

10:10AM 7 BY MR. AKINA:

10:10AM 8 Q You said that was your phone number?

10:10AM 9 A Yes.

10:10AM 10 Q Is that the same phone number that you had used when you  
10:10AM 11 were texting with -- when you gave the attorney's information  
10:10AM 12 to that customer where someone had been pulled out of the  
10:10AM 13 residence in 2018?

10:10AM 14 A Yes.

10:10AM 15 Q So this was using your company phone?

10:10AM 16 A Yes.

10:11AM 17 Q And the date here, what's the date?

10:11AM 18 A It's July 6, 2018.

10:11AM 19 Q And that was a Friday?

10:11AM 20 A Yes.

10:11AM 21 Q And the bubbles on the left, who is sending those  
10:11AM 22 messages?

10:11AM 23 A Mike.

10:11AM 24 Q And the bubble on the right, who is sending that?

10:11AM 25 A Jason Smith.

10:11AM 1 Q So are these messages not taken out of your phone, but on  
10:11AM 2 the other end from the recipient's phone?  
10:11AM 3 A Yes.  
10:11AM 4 Q And so did you send this first one, "faggot"?  
10:11AM 5 A No, I did not.  
10:11AM 6 Q Who sent that?  
10:11AM 7 A Mike.  
10:11AM 8 Q And then what about the following messages about, "We go  
10:11AM 9 meet them, show me, show me slop can, fucking queer."  
10:11AM 10 Did you send those messages?  
10:11AM 11 A No, I did not.  
10:11AM 12 Q Who sent those messages?  
10:11AM 13 A Mike.  
10:11AM 14 Q If we could look at the bottom box.  
10:11AM 15 Is this a continuation of that same conversation?  
10:12AM 16 A Yes.  
10:12AM 17 Q So where the third bubble from the top where it says,  
10:12AM 18 "let's do this, faggot. Answer my call, faggot."  
10:12AM 19 Did you sent those messages?  
10:12AM 20 A No, I did not.  
10:12AM 21 Q Who sent those messages?  
10:12AM 22 A Mike.  
10:12AM 23 Q And the message that says, "Let's meet, I like you prove  
10:12AM 24 to me you not one fag."  
10:12AM 25 Who sent that?

10:12AM 1 A Mike.

10:12AM 2 MR. AKINA: I think this is a good place to stop, Your  
10:12AM 3 Honor.

10:12AM 4 THE COURT: All right. Let's go to our first morning  
10:12AM 5 break, then. As we do so, I'll remind the jurors to please  
10:12AM 6 refrain from discussing the substance of this case with anyone,  
10:12AM 7 including one another, until I advise you otherwise; to refrain  
10:12AM 8 from accessing any media or other accounts of this case that  
10:12AM 9 may be out there; and then finally, please do not conduct any  
10:12AM 10 independent investigation into the facts, circumstances or  
10:12AM 11 persons involved. So let's take about a 15-minute break. Try  
10:12AM 12 to get back as close to 10:30 as possible. And we will resume  
10:13AM 13 at that time with Mr. Kimoto.

10:13AM 14 (Proceedings were recessed at 10:13 a.m. to 10:35  
10:14AM 15 a.m.)

10:35AM 16 THE COURT: All right. Before the break, we were in  
10:35AM 17 the midst again of Mr. Akina's direct examination of  
10:35AM 18 Mr. Kimoto. You may resume that now.

10:35AM 19 MR. AKINA: Thank you, Your Honor.

10:35AM 20 BY MR. AKINA:

10:35AM 21 Q Mr. Kimoto, to your knowledge -- your personal knowledge,  
10:36AM 22 did the defendant have any weapons?

10:36AM 23 A Yes.

10:36AM 24 Q What type of weapon?

10:36AM 25 A A baton.

10:36AM 1 Q Did you see this yourself?

10:36AM 2 A I saw it in his truck once.

10:36AM 3 Q Can you describe what you saw?

10:36AM 4 A It was a black metal object with rubber, like X rubber  
10:36AM 5 handle on there.

10:36AM 6 Q And the baton, is it just long, or how does it operate?

10:36AM 7 A It's retractable.

10:36AM 8 Q Sorry, how does it operate?

10:36AM 9 A I'm sorry, it extends and it retracts.

10:36AM 10 Q And do you have any personal familiarity with batons that  
10:36AM 11 looks like that?

10:36AM 12 A Yes. I've ordered a few off the internet.

10:36AM 13 MR. AKINA: Could we show the witness Exhibit 1-602,  
10:37AM 14 and then I'll follow up with the second one. This would just  
10:37AM 15 be for identification at this point.

10:37AM 16 THE COURT: All right.

10:37AM 17 BY MR. AKINA:

10:37AM 18 Q The baton that you saw in the defendant's truck, how does  
10:37AM 19 that compare to the photo that you are looking at now?

10:37AM 20 A It's very similar to that photo -- to the photo.

10:37AM 21 Q Similar in color?

10:37AM 22 A Similar in color and -- yeah, yes.

10:37AM 23 Q And what about the pattern that you described, that X  
10:37AM 24 pattern?

10:37AM 25 A Yes, that's also similar.

10:37AM 1 MR. AKINA: And could we show the witness Exhibit  
10:37AM 2 1-308 for identification at this time.  
10:37AM 3 BY MR. AKINA:  
10:37AM 4 Q How does this photo compare to what -- the baton that you  
10:37AM 5 observed in the defendant's truck?  
10:38AM 6 A Similar.  
10:38AM 7 Q Similar color and pattern?  
10:38AM 8 A Yes.  
10:38AM 9 Q Did you ever discuss -- you mentioned Jake Smith  
10:38AM 10 yesterday, right?  
10:38AM 11 A Yes.  
10:38AM 12 Q Did you ever discuss -- and you said that you -- that the  
10:38AM 13 defendant had told you things that Jake Smith did for him,  
10:38AM 14 including assaults, right?  
10:38AM 15 A Correct.  
10:38AM 16 Q Did the defendant discuss particular targets to be  
10:38AM 17 assaulted that he had given to Jake Smith? Did he discuss that  
10:38AM 18 with you?  
10:38AM 19 A He mentioned that a few were Tori Clegg's friends.  
10:38AM 20 Q Okay. And which individuals?  
10:38AM 21 A There was a dentist in the Diamond Head area, and also  
10:38AM 22 there was one of her -- Tori's friend's husband that got  
10:39AM 23 assaulted.  
10:39AM 24 Q Do you know who Ryan Teramoto is?  
10:39AM 25 A Yes, I know who Ryan Teramoto is.



10:39AM 1 Q Was he on the list of individuals?

10:39AM 2 A Yes.

10:39AM 3 Q So that's three people?

10:39AM 4 A Correct.

10:39AM 5 Q So starting with the Diamond Head -- the dentist in the  
10:39AM 6 Diamond Head area?

10:39AM 7 A Yes.

10:39AM 8 Q What did the defendant explain?

10:39AM 9 A He had explained to me that Johnnie and Jake went to go  
10:39AM 10 see the dentist, but they didn't get to do anything to him.

10:39AM 11 Q Anything else that was explained?

10:39AM 12 A For the dentist?

10:39AM 13 Q Yes, for the dentist.

10:39AM 14 A That he had provided them with all the information that  
10:39AM 15 they needed.

10:39AM 16 Q And he being who?

10:39AM 17 A Mike.

10:39AM 18 Q So the defendant had provided John Stancil and Jake Smith  
10:40AM 19 with information on the dentist?

10:40AM 20 A Correct.

10:40AM 21 Q And to your knowledge, did anything happen to the dentist?

10:40AM 22 A No.

10:40AM 23 Q And that dentist had some relationship to, some connection  
10:40AM 24 to Tori Clegg?

10:40AM 25 A That's what I believe.

10:40AM 1 Q You mentioned a friend of Tori Clegg's husband, correct?

10:40AM 2 A Tori Clegg's friend, her husband.

10:40AM 3 Q Okay. The husband of Tori Clegg's friend.

10:40AM 4 What did the defendant explain about that?

10:40AM 5 A That Jake had gone down to his workplace at that car

10:40AM 6 dealership and he got assaulted.

10:40AM 7 Q And was anyone else present during that conversation or

10:40AM 8 just you and the defendant?

10:40AM 9 A It was just me and Mike.

10:41AM 10 Q And then you also mentioned Ryan Teramoto.

10:41AM 11 What was explained to you about that?

10:41AM 12 A He said that Ryan -- that he called him Cert, because that

10:41AM 13 was short for his company name. Ryan owns Certified Pest

10:41AM 14 Management, I believe. So he called him Cert and he said that

10:41AM 15 he sent Jake to go assault Ryan.

10:41AM 16 Q Were you ever present for conversations with John Stancil

10:41AM 17 and Jake Smith regarding assaults?

10:41AM 18 A I was there when Jake was explaining to Mike about what

10:42AM 19 happened with the Diamond Head dentist.

10:42AM 20 Q What did Jake Smith explain to the defendant?

10:42AM 21 A That they almost assaulted the wrong person.

10:42AM 22 Q Do you know who Lindsey Kinney is?

10:42AM 23 A Yes.

10:42AM 24 Q And do you know if he has or had any type of social media

10:42AM 25 presence?

10:42AM 1 A Yes, he did.

10:42AM 2 Q Can you explain that?

10:42AM 3 A He would make videos about his experience with what

10:42AM 4 happened, I guess, at -- on the movie set.

10:42AM 5 Q What -- did he have any type of relationship with the

10:42AM 6 defendant?

10:42AM 7 A No.

10:42AM 8 Q Did they know of each other, to your knowledge?

10:42AM 9 A Yes, they knew of each other.

10:42AM 10 Q How do you know that?

10:42AM 11 A Because Lindsey was accusing Mike of trying to shoot him.

10:42AM 12 Q Where did that -- as far as the defendant is concerned,

10:43AM 13 well, backing up. So Lindsey Kinney would make social media

10:43AM 14 posts.

10:43AM 15 Can you describe the type of post, without getting

10:43AM 16 into details of what was said but just generally, where would

10:43AM 17 he post it?

10:43AM 18 A Normally on Instagram.

10:43AM 19 MR. KENNEDY: Objection on relevance and lack of

10:43AM 20 firsthand knowledge.

10:43AM 21 THE COURT: I assume this is going somewhere?

10:43AM 22 MR. AKINA: Yes, Your Honor.

10:43AM 23 THE COURT: I'll allow it for now, subject to further

10:43AM 24 objection, if you don't tie it together.

10:43AM 25 THE WITNESS: His videos were posted on Instagram and

10:43AM 1 it was just rants about discussing Mike.

10:43AM 2 BY MR. AKINA:

10:43AM 3 Q Okay. So Lindsey --

10:43AM 4 A About what happened to him at Kualoa and how he wasn't

10:43AM 5 scared and stuff. Things like that.

10:43AM 6 Q What's your understanding of what happened at Kualoa based

10:43AM 7 on these rants?

10:44AM 8 MR. KENNEDY: Objection; hearsay.

10:44AM 9 THE COURT: Overruled.

10:44AM 10 MR. KENNEDY: Lack of personal knowledge.

10:44AM 11 THE COURT: Overruled.

10:44AM 12 BY MR. AKINA:

10:44AM 13 Q What's your understanding of what happened at Kualoa based

10:44AM 14 on the posts that you saw?

10:44AM 15 A He had said that Jake and Johnnie were with Mike, and they

10:44AM 16 shot at him, but they missed.

10:44AM 17 Q Would you ever forward these types of messages to anyone?

10:44AM 18 A I would forward it to Mike, and then I forwarded one to

10:44AM 19 Jake.

10:44AM 20 Q Why would you forward it to the defendant?

10:44AM 21 A Mike said that he was saving it in a file for, I guess,

10:44AM 22 when/if he ever needed it.

10:44AM 23 Q Do you know what that means?

10:44AM 24 MR. KENNEDY: Objection; speculation, Your Honor.

10:44AM 25 THE COURT: Sustained.

10:44AM 1 BY MR. AKINA:

10:44AM 2 Q Do you know an individual named Nate Lum?

10:45AM 3 A Yes.

10:45AM 4 Q And who is he?

10:45AM 5 A Nate is Mike's friend.

10:45AM 6 Q Do you know where Nate Lum worked?

10:45AM 7 A At the stevedores. At the union.

10:45AM 8 Q And stevedores, what is that? What type of industry is  
10:45AM 9 that?

10:45AM 10 A I don't.

10:45AM 11 Q You don't know what type of work that involves?

10:45AM 12 A I don't.

10:45AM 13 Q Okay. Are you aware of whether or not the defendant --  
10:45AM 14 based on conversations with the defendant -- are you aware of  
10:45AM 15 whether or not the defendant was able to get people jobs  
10:45AM 16 working at the docks?

10:45AM 17 A He did say that he got Johnnie a job before at the docks.

10:45AM 18 Q Johnnie being who?

10:45AM 19 A John Stancil.

10:45AM 20 Q During your time working for the defendant, about how many  
10:46AM 21 phones did you have at any given time?

10:46AM 22 A Multiple.

10:46AM 23 Q When you say multiple, about how many?

10:46AM 24 A Two.

10:46AM 25 Q And we saw a phone number in a couple of exhibits that

10:46AM 1 ended in 2822?

10:46AM 2 A Yes.

10:46AM 3 Q How did you get that phone number -- that phone?

10:46AM 4 A I got that phone because Mike had asked me to go purchase  
10:46AM 5 two phones for me and him to use to just communicate with each  
10:46AM 6 other.

10:46AM 7 Q What type of phones were these?

10:46AM 8 A iPhones.

10:46AM 9 Q And the purpose was just to communicate between the two of  
10:46AM 10 you?

10:46AM 11 A Yes, to communicate between myself and Mike.

10:46AM 12 Q And when did the defendant tell you to get those phones?

10:46AM 13 A This was right around the time when Caleb got into the  
10:46AM 14 accident.

10:46AM 15 Q And what was the context for that, where the defendant  
10:46AM 16 told you to go out and about two phones, one for you and one  
10:47AM 17 for him?

10:47AM 18 A It was burner phones that would be used just for myself  
10:47AM 19 and him to communicate.

10:47AM 20 Q Did the defendant indicate why he wanted you to do that?

10:47AM 21 A No, he said that he thought that -- or he knew that law  
10:47AM 22 enforcement was monitoring his phone.

10:47AM 23 Q Did the defendant ever indicate to you what you should do  
10:47AM 24 if law enforcement approached you?

10:47AM 25 A Yeah, he just -- he said to ask for an attorney.

10:47AM 1 Q What's your understanding of what happens when you ask for  
10:47AM 2 an attorney?  
10:47AM 3 A That law enforcement can't ask me anymore questions  
10:47AM 4 without my attorney present.  
10:47AM 5 Q Are you aware of whether the defendant had an attorney  
10:47AM 6 available for other people?  
10:47AM 7 A Yeah. He would recommend Allen Kaneshiro if you got a DUI  
10:48AM 8 and if you asked him for a reference.  
10:48AM 9 Q What types of people would this recommendation be for?  
10:48AM 10 A Employees, friends.  
10:48AM 11 Q Employees and friends of the defendant?  
10:48AM 12 A Correct.  
10:48AM 13 Q Do you know who would pay for Mr. Kaneshiro's fees in  
10:48AM 14 those instances?  
10:48AM 15 MR. KENNEDY: Objection on foundation, Your Honor.  
10:48AM 16 MR. AKINA: If you know.  
10:48AM 17 THE COURT: Overruled. Go ahead.  
10:48AM 18 THE WITNESS: The person asking for the help.  
10:48AM 19 BY MR. AKINA:  
10:48AM 20 Q Now, at some point prior to your arrest in 2020, did you  
10:48AM 21 discuss with the defendant the topic of a federal  
10:48AM 22 investigation?  
10:48AM 23 A Yes.  
10:48AM 24 Q Tell us about that.  
10:48AM 25 A He had said that he was on an indictment with Kaulana and

10:48AM 1 Johnnie; Kaulana Freitas and John Stancil. And he had asked

10:49AM 2 them to not do stupid things and to lay low.

10:49AM 3 Q And was this before or after Jonathan Fraser had

10:49AM 4 disappeared, this conversation?

10:49AM 5 A This was after.

10:49AM 6 Q Did the defendant ever discuss with you what -- any

10:49AM 7 contingency plans in the event he was arrested?

10:49AM 8 A He asked me if I could help Delia run the companies.

10:49AM 9 Q That's Delia Fabro-Miske?

10:49AM 10 A Correct.

10:49AM 11 Q And were you present for any conversations between the

10:49AM 12 defendant and other people regarding what to do in the event of

10:49AM 13 an arrest, specifically Delia Fabro-Miske?

10:49AM 14 A Oh, yes.

10:49AM 15 Q Tell us about that conversation.

10:49AM 16 A We were -- well, in the same conversation that he had

10:49AM 17 asked me to help with the companies, if he was ever arrested,

10:49AM 18 he also asked her if she was indicted, if she would stand by

10:50AM 19 him or would she fold.

10:50AM 20 Q And what was her response at that time?

10:50AM 21 A She said that she would stand by him and -- even if she

10:50AM 22 had to take the years in prison.

10:50AM 23 Q Have you ever heard of a grand jury?

10:50AM 24 A Yes.

10:50AM 25 Q And what is your understanding of what a grand jury does?



10:50AM 1 A The grand jury decides if you are going to get indicted or  
10:50AM 2 not, if there is enough evidence.

10:50AM 3 Q What's your understanding of whether what a grand jury  
10:50AM 4 does is supposed to be secret or publicly known?

10:50AM 5 MR. KENNEDY: Objection on this grounds, Your Honor.

10:50AM 6 THE COURT: Objection --

10:50AM 7 MR. KENNEDY: Relevance.

10:50AM 8 THE COURT: This grounds?

10:50AM 9 MR. KENNEDY: Relevance; the understanding of what a  
10:50AM 10 grand jury does. I think the Court has already instructed the  
10:50AM 11 jury on what --

10:50AM 12 THE COURT: Sustained.

10:51AM 13 BY MR. AKINA:

10:51AM 14 Q Did the defendant ever discuss what a -- grand jury  
10:51AM 15 proceedings with you?

10:51AM 16 MR. KENNEDY: Same objection, and also on relevance.

10:51AM 17 MR. AKINA: Your Honor.

10:51AM 18 THE COURT: Go ahead.

10:51AM 19 MR. AKINA: This goes to the proof of an enterprise,  
10:51AM 20 planning, what to do, specifically to further the purposes of  
10:51AM 21 the enterprise; avoiding detection. I think it's highly  
10:51AM 22 relevant.

10:51AM 23 THE COURT: I'll allow it. Go ahead.

10:51AM 24 THE WITNESS: Can you repeat the question.

10:51AM 25 BY MR. AKINA:

10:51AM 1 Q Did the defendant ever discuss grand jury activities with  
10:51AM 2 you?

10:51AM 3 A He did mention to me that people let him know when they  
10:51AM 4 would be going in, and they would tell him after what went on.

10:51AM 5 Q So he would meet with people after they went to the grand  
10:51AM 6 jury?

10:51AM 7 A Yes.

10:51AM 8 Q According to the defendant?

10:51AM 9 A Yes.

10:51AM 10 Q Did the defendant indicate how frequently the grand jury  
10:52AM 11 met?

10:52AM 12 A He told me every Thursday.

10:52AM 13 Q Now, at some point, do you know if Wayne Miller was ever  
10:52AM 14 arrested at some point while you were working for the  
10:52AM 15 defendant?

10:52AM 16 A Yes.

10:52AM 17 Q Was he?

10:52AM 18 A Yes.

10:52AM 19 Q And after Wayne Miller was arrested, did you have any  
10:52AM 20 conversations with the defendant regarding that?

10:52AM 21 A Yes. I had asked him if he thought that Wayne would bring  
10:52AM 22 up the kidnapping.

10:52AM 23 Q You asked the defendant if the defendant thought that  
10:52AM 24 Wayne Miller would bring up the kidnapping?

10:52AM 25 A Correct.

10:52AM 1 Q Bring up the kidnapping to who?

10:52AM 2 A To the accountant, Mr. Lee.

10:52AM 3 Q Okay. And sorry, if -- you said that you asked the

10:52AM 4 defendant if he thought Wayne Miller would bring up the

10:52AM 5 accountant, the kidnapping of the accountant.

10:52AM 6 Who were you referring to that Wayne Miller might be

10:52AM 7 talking to?

10:52AM 8 A The government.

10:52AM 9 Q And how did the defendant respond?

10:53AM 10 A He said no, but then he asked me to check in with Sunny to

10:53AM 11 see if anybody came to ask her or her father any questions.

10:53AM 12 Q That was Ms. Kim?

10:53AM 13 A Correct.

10:53AM 14 Q And what did you do after he directed -- after the

10:53AM 15 defendant directed you to check in on Ms. Kim?

10:53AM 16 A I texted her and she said no.

10:53AM 17 Q And was that conversation a different conversation from

10:53AM 18 those two in December of 2022 that you told us about yesterday

10:53AM 19 with Ms. Kim?

10:53AM 20 A I don't recall. Or I don't understand.

10:53AM 21 Q Sure. So after the defendant told you to check in on

10:53AM 22 Ms. Kim, and then you said you texted her and she indicated

10:53AM 23 that she hadn't been approached by law enforcement, right?

10:53AM 24 A Yes.

10:53AM 25 Q Was that text exchange, was that separate from the two

10:53AM 1 times you met up with Ms. Kim in 2022?

10:53AM 2 A No. This was previous to my arrest in July 2020.

10:54AM 3 Q Okay, so that text exchange with Ms. Kim, that's separate

10:54AM 4 from the two meetings with her in 2022?

10:54AM 5 A Correct.

10:54AM 6 Q Now, on the topic of the kidnapping of Mr. Lee the

10:54AM 7 accountant, yesterday you had mentioned that you had been in

10:54AM 8 text communication with Wayne Miller during the time of the

10:54AM 9 kidnapping?

10:54AM 10 A Yes.

10:54AM 11 Q And that was on the day of the kidnapping?

10:54AM 12 A Yes.

10:54AM 13 Q And the day after?

10:54AM 14 A Yes.

10:54AM 15 BY MR. AKINA:

10:54AM 16 Q Could we show the witness Exhibit 5-37, Your Honor? It

10:54AM 17 has in this format.

10:55AM 18 THE COURT: Okay. Go ahead.

10:55AM 19 BY MR. AKINA:

10:55AM 20 Q And looking at the two lines on the bottom here, four and

10:55AM 21 five, the dates here are October 18th?

10:55AM 22 A Yes.

10:55AM 23 Q That's the day after the kidnapping?

10:55AM 24 A Yes.

10:55AM 25 Q And I think yesterday you had told us that this exhibit

10:55AM 1 depicts messages between Mr. Miller and yourself, correct?

10:55AM 2 A Yes.

10:55AM 3 Q And if we go to page two.

10:55AM 4 The dates for all these messages, is that also

10:55AM 5 October 18th of 2017?

10:55AM 6 A Yes.

10:55AM 7 Q And if we go to the next page.

10:55AM 8 Again, these are all on October 18, 2017?

10:55AM 9 A Yes.

10:55AM 10 Q And page four. What are the dates for these?

10:56AM 11 A That is October 17, 2017.

10:56AM 12 Q That's the day of the kidnapping?

10:56AM 13 A Correct.

10:56AM 14 Q And if we could go to the next page, page five.

10:56AM 15 Is that also from the day of the kidnapping?

10:56AM 16 A Yes.

10:56AM 17 Q So all the messages on page five are also from that

10:56AM 18 October 17th day?

10:56AM 19 A Yes.

10:56AM 20 Q The last page, page six.

10:56AM 21 That's also from October 17, 2017?

10:56AM 22 A Yes.

10:56AM 23 Q And yesterday, you testified that these related to the

10:56AM 24 kidnapping; these messages?

10:56AM 25 A Yes.

10:56AM 1 MR. AKINA: At this point, I would offer Exhibit 5-37.  
10:56AM 2 I'd renew that offer into evidence.  
10:57AM 3 MR. KENNEDY: No objection, Your Honor.  
10:57AM 4 THE COURT: All right. Has this exhibit been  
10:57AM 5 modified?  
10:57AM 6 MR. AKINA: Yes.  
10:57AM 7 THE COURT: Yes?  
10:57AM 8 MR. AKINA: Yes.  
10:57AM 9 THE COURT: Without objection, Exhibit 5-37 is  
10:57AM 10 admitted.  
10:57AM 11 (Exhibit 5-37 was received in evidence.)  
10:57AM 12 MR. AKINA: So let's start on -- permission to  
10:57AM 13 publish, Your Honor?  
10:57AM 14 THE COURT: Yes.  
10:57AM 15 BY MR. AKINA:  
10:57AM 16 Q And if we could start on page six. And zoom in on these,  
10:57AM 17 the three columns showing the text, the time, and the person  
10:57AM 18 sending or receiving.  
10:57AM 19 So starting at the bottom one on October 17, 2017, at  
10:57AM 20 5:21 p.m., this is an outgoing message and it's going to who?  
10:57AM 21 A That's going to me.  
10:57AM 22 Q So this is a message that Wayne Miller is sending to you?  
10:58AM 23 A Yes.  
10:58AM 24 Q And on the left column where it says a phone number ending  
10:58AM 25 in 4516, was that your number at that time?

10:58AM 1 A Yes.

10:58AM 2 Q One of your numbers?

10:58AM 3 A Yes.

10:58AM 4 Q And press10, you're Preston, right?

10:58AM 5 A Yes.

10:58AM 6 Q In these two messages, what does Wayne Miller send to you?

10:58AM 7 A He says, "Yo, call me ASAP."

10:58AM 8 Q If we could go to the next page.

10:58AM 9 This next line, what does the defendant say? Sorry,

10:58AM 10 not the defendant. What does Wayne Miller say?

10:58AM 11 A "WTF brah."

10:58AM 12 Q The next, he tells you?

10:58AM 13 A "Text me back or something."

10:58AM 14 Q If we could scroll up, please. So that text me back, that

10:59AM 15 was at 5:37 and then at 6:08, this is an incoming message.

10:59AM 16 So who is sending this message now?

10:59AM 17 A This is me.

10:59AM 18 Q This is you responding to Wayne Miller?

10:59AM 19 A Yes.

10:59AM 20 Q And what do you tell him?

10:59AM 21 A "I was at a house and I left my phone in the truck. Hold

10:59AM 22 on. She just got home."

10:59AM 23 Q And then you say meet me, and give me 15 minutes?

10:59AM 24 A Yes.

10:59AM 25 Q So stopping here, what's going on up to this point with

10:59AM 1 these text messages?

10:59AM 2 A Wayne is trying to get a hold of me.

10:59AM 3 Q And in relation to the events that happened during the

10:59AM 4 kidnapping, when did that take place?

10:59AM 5 A I'm not sure, because I don't even know why he is

10:59AM 6 contacting -- he's trying to contact me.

10:59AM 7 Q So at at this point in time, you didn't know why Wayne

10:59AM 8 Miller was trying to reach out to you?

10:59AM 9 A No, I didn't.

10:59AM 10 Q So when you told Wayne Miller that you were at the house

11:00AM 11 and you left your phone in the truck, why did you tell him

11:00AM 12 that?

11:00AM 13 A To buy more time.

11:00AM 14 Q For what?

11:00AM 15 A So I can ask Mike what Wayne was contacting -- if he knew

11:00AM 16 what Wayne wanted to get in contact with me about.

11:00AM 17 Q Mike, being the defendant?

11:00AM 18 A Yes.

11:00AM 19 Q If we could scroll up, please. So you see this message,

11:00AM 20 Wayne Miller says "text you K." And then you respond "Call you

11:00AM 21 right back." And there is a gap of about an hour. Wayne

11:00AM 22 Miller sends you a message at 6:44 p.m. You respond, "Call you

11:00AM 23 right back" at 7:47 p.m.

11:00AM 24 Do you see that?

11:00AM 25 A Yes.



11:00AM 1 Q And if we scroll up a little more. Wayne Miller says, K.

11:00AM 2 And then at 8:11 p.m. he texts you, brah.

11:01AM 3 Do you see that?

11:01AM 4 A Yes.

11:01AM 5 Q Scroll up some more. Wayne Miller texts you, "No more all

11:01AM 6 night," also at 11 p.m.

11:01AM 7 What is going on at that point?

11:01AM 8 A He's getting irritated that I haven't called him or got in

11:01AM 9 contact with him.

11:01AM 10 Q So at this point, did you know that the accountant had

11:01AM 11 been kidnapped?

11:01AM 12 A No.

11:01AM 13 Q Will you scroll up some more. You text him, "I know,

11:01AM 14 coming now." Keep scrolling up, please. And at the top of

11:01AM 15 page four, you tell him that you're at Ala's, 5 to 10 minutes.

11:01AM 16 Ala's refers to what location?

11:01AM 17 A Ala Moana shopping center.

11:01AM 18 Q And how far is that from the Kama'aina Termite and Pest

11:02AM 19 Control office?

11:02AM 20 A Like, five minutes.

11:02AM 21 Q Keep scrolling up to page three. The bottom of page

11:02AM 22 three.

11:02AM 23 Now, this is a different day, right, October 18th?

11:02AM 24 A Yes.

11:02AM 25 Q So what happens between the previous page and this next

11:02AM 1 message where Wayne Miller is telling you "call me ASAP?" So

11:02AM 2 after you said, I'm by Ala's, 5 to 10 minutes, what happens?

11:02AM 3 A That I believe I met up with Wayne and we had -- this is

11:02AM 4 after -- that we met after I found out at the office at the

11:02AM 5 shop that the person got kidnapped.

11:02AM 6 Q This was the meeting at Sheridan Park with Wayne Miller

11:02AM 7 you are referring to?

11:02AM 8 A Yes.

11:02AM 9 Q Where you then drove around in a car with him discussing

11:02AM 10 payment?

11:02AM 11 A Yes.

11:02AM 12 Q So at that point, you already knew about the kidnapping?

11:02AM 13 A Correct.

11:02AM 14 Q So prior to that, was that other meeting where you learned

11:03AM 15 about the kidnapping through the defendant?

11:03AM 16 MR. KENNEDY: Objection; leading.

11:03AM 17 THE COURT: Sustained.

11:03AM 18 BY MR. AKINA:

11:03AM 19 Q Did you learn about the kidnapping prior to that message

11:03AM 20 that you sent about you're by Ala's?

11:03AM 21 A Yes.

11:03AM 22 Q How did you learn about it?

11:03AM 23 A I learned about it at the office with Mike and Wayne.

11:03AM 24 Q So now the next day, October 18th, you see where Wayne

11:03AM 25 Miller texts you, "call me ASAP," and then he texts you,

11:03AM 1 "Press, I just gotta take care of my boys something, then I can  
11:03AM 2 wait until tomorrow is Thursday."  
11:03AM 3 Do you see that?  
11:03AM 4 A Yes.  
11:03AM 5 Q What is that in reference to?  
11:03AM 6 A He wants me to call him back because he has to take care  
11:03AM 7 of the person -- he wants me to call him back to see if I got  
11:03AM 8 any money from Sunny and her father, because he has to take  
11:03AM 9 care of, I guess, the person who helped him.  
11:04AM 10 Q Could we scroll up more please. And you tell Wayne Miller  
11:04AM 11 that you're doing an estimate right now, "braddah said hold on  
11:04AM 12 and I'm going to meet him at shop right after this and get back  
11:04AM 13 to you." Right?  
11:04AM 14 A Yes.  
11:04AM 15 Q And in this context, who are you referring to when you  
11:04AM 16 wrote braddah?  
11:04AM 17 A Mike.  
11:04AM 18 Q And who -- where are you referring to when you put shop?  
11:04AM 19 A Kama'aina Termite.  
11:04AM 20 Q And then Wayne Miller asks you, who, right?  
11:04AM 21 A Yes.  
11:04AM 22 Q And scrolling up some more, you respond "bro"?  
11:04AM 23 A Yes.  
11:04AM 24 Q Who is bro in this context?  
11:04AM 25 A Bro is Mike.

11:04AM 1 Q The defendant?

11:04AM 2 A Yes.

11:04AM 3 Q And if we could keep scrolling up.

11:05AM 4 Wayne Miller asks you, "what about your guy, he come  
11:05AM 5 true"?

11:05AM 6 A Yes.

11:05AM 7 Q So what's happening in this exchange?

11:05AM 8 A He is still asking me if I talked to Sunny and her father  
11:05AM 9 and if they said -- I mean if they agreed to give something.

11:05AM 10 Q If we could scroll up to page two now. You tell Wayne  
11:05AM 11 Miller, not yet. And Wayne Miller says, "Why, I need 'em,  
11:05AM 12 brah."

11:05AM 13 What is that referring to?

11:05AM 14 A I told him not yet because I didn't talk to Sunny or her  
11:05AM 15 father.

11:05AM 16 Q So you're still talking about money?

11:05AM 17 A Yes.

11:05AM 18 Q Keep scrolling up please. You tell him, "Let me finish  
11:05AM 19 this estimate. I'll get back to you."

11:06AM 20 You see that?

11:06AM 21 A Yes.

11:06AM 22 Q So are you working at this time?

11:06AM 23 A Yes. I'm working doing my normal estimates.

11:06AM 24 Q For which company?

11:06AM 25 A I'm not sure which company, because at the same time I

11:06AM 1 worked for both companies. I did estimates for Kama'aina and

11:06AM 2 also O'ahu Termite.

11:06AM 3 Q So it was one of the two termite companies?

11:06AM 4 A Yes.

11:06AM 5 Q If we could scroll up please. Here at 5:39 p.m. on

11:06AM 6 October 18th, Wayne Miller reaches out again and he says,

11:06AM 7 "What, you guys left the shop?"

11:06AM 8 What did you take the shop to refer to?

11:06AM 9 A The shop is Kama'aina Termite.

11:06AM 10 Q Scrolling up some more, Wayne Miller texts you, "I went

11:06AM 11 stop by shop to checkout, he not there."

11:06AM 12 Who did you take "he" to be a reference to?

11:06AM 13 A Mike.

11:07AM 14 Q If we could scroll up to page one, please. Here you text

11:07AM 15 Wayne Miller "WYA."

11:07AM 16 What does that mean?

11:07AM 17 A Where you at.

11:07AM 18 Q And you tell him the beach is closed. What does that

11:07AM 19 mean?

11:07AM 20 A The beach was a place that Mike told me to tell Wayne to

11:07AM 21 meet us at. I don't know what the beach is. I mean, the beach

11:07AM 22 was between him and Wayne. They knew what the beach was. I

11:07AM 23 didn't know what the beach meant but I -- Mike told me to tell

11:07AM 24 Wayne that the beach was closed.

11:07AM 25 Q Okay. And so what happened -- did you have a conversation

11:07AM 1 with the defendant about meeting with Wayne Miller then?

11:07AM 2 A Yes.

11:07AM 3 Q And what took place at that conversation?

11:07AM 4 A He told me to set up a meeting between Wayne, because I  
11:07AM 5 told him that Wayne kept bugging me to ask my friend for money.

11:08AM 6 Q And was that a meeting that you told us about yesterday?

11:08AM 7 A Yes.

11:08AM 8 Q What meeting was that?

11:08AM 9 A That was a meeting that took place in the Fisherman's  
11:08AM 10 Wharf -- in back of Fisherman's Wharf area.

11:08AM 11 Q And at that meeting, what did the defendant tell Wayne  
11:08AM 12 Miller?

11:08AM 13 A The defendant told Wayne to stop asking me for money  
11:08AM 14 because they didn't do anything, and they didn't complete --  
11:08AM 15 they didn't get any money from the victim. They didn't collect  
11:08AM 16 any money from the victim.

11:08AM 17 Q Was that before or after the defendant asked you to try to  
11:08AM 18 get ten percent from Ms. Kim?

11:08AM 19 A That was before.

11:08AM 20 Q In 2017, did you ever receive a \$17,000 cashiers check  
11:08AM 21 payment that went into your account?

11:09AM 22 A No.

11:09AM 23 Q I want to show you Exhibit 9-869. This is a one-page  
11:09AM 24 document that I think I provided -- directed counsel to the  
11:09AM 25 certificate of authenticity previously.

11:09AM 1 MR. KENNEDY: Yes.

11:09AM 2 BY MR. AKINA:

11:09AM 3 Q And what is this a picture of?

11:09AM 4 A A cashiers check.

11:09AM 5 Q And who is it made out to?

11:09AM 6 A Myself.

11:09AM 7 Q And the amount is?

11:09AM 8 A 17,000.

11:09AM 9 Q \$17,000?

11:09AM 10 A \$17,000, correct.

11:09AM 11 Q And this is in 2017?

11:09AM 12 A Yes.

11:09AM 13 Q And on the the backside of the check, whose signature is

11:09AM 14 that?

11:09AM 15 A That's my signature.

11:09AM 16 Q And there is a letter followed by a series of numbers.

11:09AM 17 What is that?

11:10AM 18 A My driver's license number.

11:10AM 19 MR. AKINA: Your Honor, pursuant to the party's

11:10AM 20 stipulation regarding documents that are accompanied by a

11:10AM 21 certificate of authenticity, I'd offer this into evidence at

11:10AM 22 this point.

11:10AM 23 THE COURT: Any objection, counsel?

11:10AM 24 MR. KENNEDY: No objection.

11:10AM 25 THE COURT: Without objection, Exhibit 9-869 is

11:10AM 1 admitted. You may publish.

11:10AM 2 (Exhibit 9-869 was received in evidence.)

11:10AM 3 BY MR. AKINA:

11:10AM 4 Q If we can focus on the top part, the front of the check,  
11:10AM 5 please.

11:10AM 6 So the date of this cashiers check is February 16,  
11:10AM 7 2017?

11:10AM 8 A Yes.

11:10AM 9 Q And you see your name there on the left side, "to the  
11:10AM 10 order of"?

11:10AM 11 A Yes.

11:10AM 12 Q And there is a regarding Ross Yoshioka.

11:10AM 13 Do you know who that is?

11:10AM 14 A I do not know who Ross Yoshioka is.

11:11AM 15 Q If we could focus on the back of the check, on the top  
11:11AM 16 right corner, that's your signature?

11:11AM 17 A Yes.

11:11AM 18 Q And that letter and series of numbers that are followed by  
11:11AM 19 it, what is that again?

11:11AM 20 A My driver's license.

11:11AM 21 Q So fair to say, did you sign this check?

11:11AM 22 A Yes.

11:11AM 23 Q And -- but as you recall today, you don't recall ever  
11:11AM 24 receiving this \$17,000 into your bank account?

11:11AM 25 A I never deposited this \$17,000 into my bank account.



11:11AM 1 Q Would you ever run personal errands for the defendant

11:11AM 2 while you worked for him?

11:11AM 3 A Yes.

11:11AM 4 Q Would you ever do shopping errands for the defendant while

11:11AM 5 you worked for him?

11:11AM 6 A No.

11:12AM 7 Q So you never -- did you ever go to Chanel and purchase

11:12AM 8 something in all cash on behalf of the defendant?

11:12AM 9 A No.

11:12AM 10 MR. AKINA: Could I show the witness Exhibit 1-608 for

11:12AM 11 identification.

11:12AM 12 THE COURT: You may.

11:12AM 13 BY MR. AKINA:

11:12AM 14 Q If we could zoom in on the receipt portion here.

11:12AM 15 You see it says Chanel at the top?

11:12AM 16 A Yes.

11:12AM 17 Q And the client is a Mr. Preston Kinamoto?

11:12AM 18 A Yes.

11:12AM 19 Q Did you ever use that name, Preston Kinamoto, to make a

11:12AM 20 purchase?

11:12AM 21 A No.

11:12AM 22 Q Now, after you were arrested in 2020, you said that you

11:13AM 23 were released out on pretrial release.

11:13AM 24 A Correct.

11:13AM 25 Q Did that status change at some point?

11:13AM 1 A Yes.

11:13AM 2 Q What happened?

11:13AM 3 A I got rearrested for witness tampering.

11:13AM 4 Q Was that related to your 2022 meetings with Ms. Kim?

11:13AM 5 A Yes.

11:13AM 6 Q Relating to the kidnapping?

11:13AM 7 A Correct.

11:13AM 8 Q And after your status changed, where were you housed?

11:13AM 9 A I was housed at the detention center.

11:13AM 10 Q Was that here in Honolulu?

11:13AM 11 A Yes.

11:13AM 12 Q When you got there, did anyone convey messages to you on

11:13AM 13 behalf of the defendant?

11:14AM 14 A Yes.

11:14AM 15 Q What happened?

11:14AM 16 A I got a job at FDC to work downstairs as a rec orderly.

11:14AM 17 So that meant you help organize games for the inmates when we

11:14AM 18 have long holiday periods. Then from there, when I went down

11:14AM 19 the first time, they -- one inmate that was down there, he was

11:14AM 20 explaining to me what I had to do to organize these games. But

11:14AM 21 in between explaining to me, he said that Mike wanted to know

11:14AM 22 where I stood, if I was still going to go to trial; what was my

11:14AM 23 thinking.

11:14AM 24 Q What was the name of that inmate?

11:14AM 25 A His last name is Javillo. I don't know his first name.

11:14AM 1 Q Did you respond at that point?

11:14AM 2 A Yeah. I told him that I didn't know what I was going to  
11:15AM 3 do yet.

11:15AM 4 Q And at this point, had you pled guilty?

11:15AM 5 A No, I did not plead guilty yet.

11:15AM 6 Q At this point, had you entered into any type of agreement  
11:15AM 7 with the government?

11:15AM 8 A I did not.

11:15AM 9 Q And did you receive any other messages?

11:15AM 10 A Yes. During that same time that I was downstairs, then  
11:15AM 11 another inmate that was down there, his name -- we just called  
11:15AM 12 him NG, he showed me a note. He said that this note came  
11:15AM 13 from -- this note is from Mike. And he doesn't care what I  
11:15AM 14 have to say. He is just passing this note to me.

11:15AM 15 Q Did you read that note?

11:15AM 16 A I did read part of the note.

11:15AM 17 Q Did you keep the note?

11:15AM 18 A No, I didn't keep the note.

11:15AM 19 Q What did you ultimately do with the note?

11:16AM 20 A NG took the note back.

11:16AM 21 Q Why?

11:16AM 22 A Because he probably didn't want any paper trail.

11:16AM 23 Q But you gave the note back to NG?

11:16AM 24 A Yeah, well, he took it -- he took it from me because  
11:16AM 25 somebody -- one of the officers was coming and we were going to

11:16AM 1 go back upstairs. So NG said give me the note back and then he  
11:16AM 2 took it.

11:16AM 3 Q So from the portion of that note that you read, what do  
11:16AM 4 you recall?

11:16AM 5 A Mike was asking me how my family was, and to stay strong,  
11:16AM 6 and we can beat this -- we can beat this case. And he said  
11:16AM 7 that we all have families to go back to. So we need to stay  
11:16AM 8 together.

11:16AM 9 Q What did you interpret -- how did you receive that? What  
11:16AM 10 was your response?

11:16AM 11 A That -- I didn't respond back to NG. But prior to this,  
11:17AM 12 from the first inmate, when he was telling me verbally what  
11:17AM 13 Mike was asking of me, I did tell him that I'm going to take my  
11:17AM 14 family into -- like, I'm going to consider my family first  
11:17AM 15 before I ever consider doing anything for Mike.

11:17AM 16 Q And both of these inmates who came up to you, I mean, was  
11:17AM 17 it threatening?

11:17AM 18 A No, they didn't threaten me in any way.

11:17AM 19 Q After you were detained at FDC, around that time period,  
11:18AM 20 did you receive messages from guards?

11:18AM 21 A I did receive a few messages from the guards.

11:18AM 22 Q And what was the substance of that?

11:18AM 23 A They had said that Mike was sending his love and to stay  
11:18AM 24 strong.

11:18AM 25 Q Now, besides the marijuana vape pens that you were

11:18AM 1 selling, were you involved in any other types of drugs?

11:18AM 2 A On a few occasions, yes.

11:18AM 3 Q Tell us about that.

11:18AM 4 A A friend had asked me if I knew anybody who could get them

11:18AM 5 pills. And I said, oh, I might. Then I would ask a friend --

11:18AM 6 another friend if they could, and from there -- from there

11:18AM 7 introduced them.

11:18AM 8 Q What type of pills were these?

11:18AM 9 A Percs -- Percocet, Xanax.

11:19AM 10 Q So you helped people obtain drugs, pills?

11:19AM 11 A I helped introduce them to people. They never met or

11:19AM 12 anything but that was only -- that was a few occasions when

11:19AM 13 somebody had asked.

11:19AM 14 Q Okay, so it's been more than one time?

11:19AM 15 A Yes.

11:19AM 16 Q And earlier, you had testified that you had been involved

11:19AM 17 in gambling as well; correct?

11:19AM 18 A Yes.

11:19AM 19 Q What type of gambling?

11:19AM 20 A Sports, sports betting.

11:19AM 21 Q And to your knowledge, is that legal to do here in Hawaii?

11:19AM 22 A No.

11:19AM 23 Q Who would you gamble with?

11:19AM 24 A I would gamble through a website, and I'll get the

11:19AM 25 websites from various people.

11:19AM 1 Q Are you familiar with someone named Richard McGuire?

11:19AM 2 A Yes.

11:20AM 3 Q Who was that?

11:20AM 4 A Mike's cousin.

11:20AM 5 Q And did you have any involvement with him relating to  
11:20AM 6 gambling?

11:20AM 7 A Yes. Early on when I worked at Kama'aina in 2015, Richard  
11:20AM 8 gave me a few sites to play on.

11:20AM 9 Q To your knowledge, was the defendant ever involved in  
11:20AM 10 sports betting gambling?

11:20AM 11 A Yes.

11:20AM 12 Q How do you know that?

11:20AM 13 A He had asked me to meet somebody at the shop to collect.  
11:20AM 14 That person was going to drop off the money that he won.

11:20AM 15 Q Did you meet with someone?

11:20AM 16 A Yes.

11:20AM 17 Q At the shop?

11:20AM 18 A Yes.

11:20AM 19 Q And the shop being Kama'aina Termite?

11:20AM 20 A Correct.

11:20AM 21 Q And what did that person provide you?

11:20AM 22 A He dropped off an envelope with money in it.

11:20AM 23 Q Cash?

11:20AM 24 A Cash.

11:20AM 25 Q And what did you do with that money?

11:20AM 1 A I put it in Mike's office in the bottom left drawer.

11:20AM 2 Q That's the same one that you put the payments that you

11:20AM 3 received from Ms. Kim?

11:20AM 4 A Yes.

11:21AM 5 Q When you received this payment for gambling, was that

11:21AM 6 during the time period where you worked for the defendant?

11:21AM 7 A Yes.

11:21AM 8 Q And how did you know that money was intended for the

11:21AM 9 defendant?

11:21AM 10 A Because he told me to meet this person and the person was

11:21AM 11 going to give me his money.

11:21AM 12 Q Now, in the context of the businesses that were owned by

11:21AM 13 the defendant that you were working at over that period of 2015

11:21AM 14 to 2020, who was in charge of each of those businesses?

11:21AM 15 A Mike.

11:21AM 16 Q And for the kidnapping that you were involved in, if the

11:21AM 17 defendant had told you no, I'm not going to help your friend,

11:21AM 18 would you have persisted in trying to help your friend?

11:21AM 19 A No.

11:21AM 20 Q And why did you bring Ms. Kim's request to help recover

11:22AM 21 the debt to the defendant?

11:22AM 22 A Because Mike was the only person that I knew that could go

11:22AM 23 and talk to this person.

11:22AM 24 Q You testified about assaults carried out by Wayne Miller,

11:22AM 25 Jacob Smith, and John Stancil.

11:22AM 1 Who was giving the orders for all those assaults?

11:22AM 2 A Mike.

11:22AM 3 Q And during your time associating with the defendant, would

11:22AM 4 you have gone against any direct order that he told you?

11:22AM 5 A No.

11:22AM 6 Q Why not?

11:22AM 7 A Because I was loyal to Mike and I didn't want any problems

11:22AM 8 of retaliation because I went against him.

11:22AM 9 Q Did you ever benefit from your association with the

11:22AM 10 defendant?

11:22AM 11 A I did.

11:22AM 12 Q Can you provide us an example of that?

11:22AM 13 A There was an occasion where I owed a large sum of money

11:23AM 14 for sports gambling. And the person that was supposed to

11:23AM 15 collect that money from me knew that me and Mike were good

11:23AM 16 friends. So he met -- he met with Mike and he told Mike that

11:23AM 17 they were just going to squash the debt. He didn't want any

11:23AM 18 problems.

11:23AM 19 Q Sorry for interrupting.

11:23AM 20 How did you learn this?

11:23AM 21 A Mike told me.

11:23AM 22 Q You said it was a substantial amount of money. About how

11:23AM 23 much money did you owe?

11:23AM 24 A 20, \$30,000.

11:23AM 25 Q And when Mike told you that he squashed this debt for you,



11:23AM 1 did you have have to make any payments to anyone on that debt?

11:23AM 2 A No, I did not.

11:23AM 3 Q Did that take place during the time period that you worked

11:23AM 4 for the defendant?

11:23AM 5 A Yes.

11:23AM 6 Q Now, at the time that you pled guilty to conspiracy to

11:24AM 7 commit kidnapping --

11:24AM 8 A Yes.

11:24AM 9 Q -- that was in regards to the accountant?

11:24AM 10 A Yes.

11:24AM 11 Q At that time, did you enter into a plea agreement with the

11:24AM 12 United States?

11:24AM 13 A Can you repeat the question?

11:24AM 14 Q Did you enter into a plea agreement with the government?

11:24AM 15 A Yes.

11:24AM 16 Q And as part of that plea agreement that you had with the

11:24AM 17 government, are you testifying -- have you testified here

11:24AM 18 yesterday and today?

11:24AM 19 A Yes.

11:24AM 20 Q And what do you hope to gain for yourself, if anything, by

11:24AM 21 testifying in this trial?

11:24AM 22 A I hope to gain a favorable judgment -- I mean, a favorable

11:24AM 23 sentence.

11:24AM 24 Q What do you mean by that?

11:24AM 25 A A more lenient sentence for my testifying today and

11:25AM 1 yesterday.

11:25AM 2 Q And what's your understanding of who ultimately decides

11:25AM 3 that sentence?

11:25AM 4 A Judge Watson.

11:25AM 5 Q And are you hoping to get anything from the government by

11:25AM 6 testifying at this trial?

11:25AM 7 A I'm hoping to get a recommendation from the government.

11:25AM 8 Q And has that been promised to you, that a recommendation

11:25AM 9 will be made?

11:25AM 10 A No.

11:25AM 11 MR. AKINA: One moment, Your Honor.

11:25AM 12 THE COURT: Yes.

11:25AM 13 MR. AKINA: No further questions at this time.

11:26AM 14 THE COURT: Mr. Kennedy, cross-examination when you're

11:26AM 15 ready.

11:26AM 16 MR. KENNEDY: Thanks, Your Honor. Before I get

11:26AM 17 started, I do have a motion under rule 26.2.

11:26AM 18 THE COURT: Go ahead.

11:26AM 19 MR. KENNEDY: I would ask for any statements that

11:26AM 20 Mr. Kimoto has made, since the last one I received was in the

11:26AM 21 summer of 2023.

11:26AM 22 MR. AKINA: I believe any 302 reports have been

11:26AM 23 furnished to defense counsel, Your Honor.

11:26AM 24 THE COURT: Is there a reason why you think you

11:26AM 25 haven't received all the statements?

11:26AM 1 MR. KENNEDY: Because there were topics and areas that  
11:26AM 2 were discussed today that were not in those previous  
11:26AM 3 statements.

11:26AM 4 THE COURT: Mr. Akina, your representation is there is  
11:26AM 5 no such statement, correct?

11:27AM 6 MR. AKINA: Your Honor, there were multiple meetings  
11:27AM 7 with the witness. We have prepared for trial. Not every  
11:27AM 8 single word gets reduced into a 302 report.

11:27AM 9 THE COURT: I'm not asking whether you had multiple  
11:27AM 10 meetings in preparation for trial. I'm asking whether the  
11:27AM 11 statements that counsel has requested have all been produced.

11:27AM 12 MR. AKINA: Yes, any statements we had have been  
11:27AM 13 produced, Your Honor.

11:27AM 14 THE COURT: Motion is denied. Let's go.

11:27AM 15 CROSS-EXAMINATION

11:27AM 16 BY MR. KENNEDY:

11:27AM 17 Q Sir, I want to take you to July 15, 2020, when you were  
11:27AM 18 originally arrested, okay?

11:27AM 19 A Yes.

11:27AM 20 Q At about 6:25 in the morning, you had your white Toyota  
11:27AM 21 Tacoma truck, right?

11:27AM 22 A Yes.

11:27AM 23 Q You were able to back out of your driveway at your home,  
11:27AM 24 right?

11:27AM 25 A Yes.

11:27AM 1 Q About three minutes later, a Honolulu police department  
11:27AM 2 vehicle stopped you, right?

11:28AM 3 A No, that's not what -- I believe I got stopped later.  
11:28AM 4 Later in the morning.

11:28AM 5 Q You didn't leave at 6:25 and get stopped at 6:28 a.m. in  
11:28AM 6 the morning?

11:28AM 7 A No. I believe that morning I went to work out at Mike's  
11:28AM 8 Portlock house. And I returned home -- I don't know exactly  
11:28AM 9 what time I left my house -- my home to go to work that day.

11:28AM 10 Q All right. Okay. And at that time when you were stopped,  
11:28AM 11 you handed an expired driver's license to the officer?

11:28AM 12 A Yes.

11:28AM 13 Q And that wasn't at 6:28 a.m.?

11:28AM 14 A I don't know what time that was, sir.

11:29AM 15 Q Would it help to look at that report regarding that to  
11:29AM 16 refresh your recollection today?

11:29AM 17 A Yes.

11:29AM 18 MR. KENNEDY: Ms. King, can you pull up 9010-067 for  
11:29AM 19 Mr. Kimoto and just for Mr. Kimoto.

11:29AM 20 BY MR. KENNEDY:

11:29AM 21 Q Do you see that, sir?

11:29AM 22 A Yes.

11:29AM 23 Q All right. If you can look down at the 5th paragraph and  
11:29AM 24 then the 6th paragraph, just read those to yourself and then  
11:29AM 25 I'll ask you some questions after you're done.

11:30AM 1 A Okay.

11:30AM 2 Q Have you finished?

11:30AM 3 A Yes.

11:30AM 4 MR. KENNEDY: Okay. We can pull that down, Ms. King.

11:30AM 5 And we can take it off the screen as well.

11:30AM 6 BY MR. KENNEDY:

11:30AM 7 Q Let me ask you now. Having read that, does that refresh

11:30AM 8 your recollection of what happened on the day you got arrested

11:30AM 9 for these charges?

11:30AM 10 A Yes.

11:30AM 11 Q So at 6:25, you pulled out of your driveway, backed out in

11:30AM 12 your Toyota Tacoma truck, right?

11:30AM 13 A Yes.

11:30AM 14 Q Three minutes later at 6:28, you were pulled over,

11:30AM 15 correct?

11:30AM 16 A Yes.

11:30AM 17 Q You handed them an expired driver's license, correct?

11:30AM 18 A Yes.

11:30AM 19 Q You were then arrested, right?

11:30AM 20 A Yes.

11:30AM 21 Q And you were brought to -- and you were told that you were

11:30AM 22 under arrest for things relating to conspiracy charges, right?

11:31AM 23 A No.

11:31AM 24 Q Okay. You weren't told that?

11:31AM 25 A I wasn't told that.

11:31AM 1 Q Okay. You were transported to the Federal Detention  
11:31AM 2 Center here in Honolulu?  
11:31AM 3 A Yes.  
11:31AM 4 Q And they put an N95 mask on your face at that time, right?  
11:31AM 5 A Yes.  
11:31AM 6 Q We were in the middle of COVID, right?  
11:31AM 7 A Correct.  
11:31AM 8 Q So then you went to the detention center, right?  
11:31AM 9 A Yes.  
11:31AM 10 Q Over by the airport, correct?  
11:31AM 11 A Yes.  
11:31AM 12 Q They put you into a cell, right?  
11:31AM 13 A Yes.  
11:31AM 14 Q You were in lockdown, right?  
11:31AM 15 A Yes.  
11:31AM 16 Q No visitors, right?  
11:31AM 17 A Yes.  
11:31AM 18 Q Never outdoors, right?  
11:31AM 19 A Yes.  
11:31AM 20 Q No attorney visits, correct?  
11:31AM 21 A Yes.  
11:31AM 22 Q Complete isolation, correct?  
11:31AM 23 A Yes.  
11:31AM 24 Q Depression set in, didn't it, sir?  
11:31AM 25 A I've never -- I don't know if I was experiencing

11:32AM 1 depression, but I was in shock. This was my first time being

11:32AM 2 arrested.

11:32AM 3 Q And you were in shock?

11:32AM 4 A Yes.

11:32AM 5 Q And you were in isolation?

11:32AM 6 A Yes.

11:32AM 7 Q And that morning you had been there with your family and

11:32AM 8 your children, and all of a sudden your life was turned upside

11:32AM 9 down, correct?

11:32AM 10 MR. AKINA: Objection, irrelevance.

11:32AM 11 MR. KENNEDY: Bias.

11:32AM 12 THE COURT: Overruled. Mr. Kennedy, before you

11:32AM 13 continue, can that document on the screen be taken down.

11:32AM 14 MR. KENNEDY: Oh, I didn't see that it came up. I

11:32AM 15 apologize. I was looking at Mr. Kimoto.

11:32AM 16 THE COURT: Not a problem.

11:32AM 17 BY MR. KENNEDY:

11:32AM 18 Q The other thing you had, as I said, your life had been

11:32AM 19 turned upside down; you have children, correct?

11:32AM 20 A Yes.

11:32AM 21 Q You have someone that you lived with, right?

11:32AM 22 A Yes.

11:32AM 23 Q And all of the sudden, that was taken away from you,

11:32AM 24 correct?

11:32AM 25 A Correct.

11:33AM 1 Q So you had a lot of fear at that time, didn't you?

11:33AM 2 A A lot of uncertainty.

11:33AM 3 Q Uncertainty?

11:33AM 4 A Correct.

11:33AM 5 Q And so what seemed like forever from that day, July 15th

11:33AM 6 up to July 21st, you remained in that condition, correct?

11:33AM 7 A Correct.

11:33AM 8 Q On the 21st of July, 2020, there was a court hearing,

11:33AM 9 right?

11:33AM 10 A Yes.

11:33AM 11 Q You were still at the Federal Detention Center, right?

11:33AM 12 A Yes.

11:33AM 13 Q Because we were in COVID and no one was coming to court,

11:33AM 14 right?

11:33AM 15 A Correct.

11:33AM 16 Q So you were on the telephone, right?

11:33AM 17 A Yes.

11:33AM 18 Q And there was a hearing, right?

11:33AM 19 A Yes.

11:33AM 20 Q And there were two sides, right?

11:33AM 21 A Yes.

11:33AM 22 Q And this side was asking a judge to keep you in custody,

11:33AM 23 right?

11:33AM 24 A Correct.

11:34AM 25 Q Your lawyer, who is here today, was asking for your



11:34AM 1 release, right?

11:34AM 2 A Yes.

11:34AM 3 Q And the judge ruled that you could be on release, right?

11:34AM 4 A Yes.

11:34AM 5 Q There were pretrial conditions, correct?

11:34AM 6 A Correct.

11:34AM 7 Q The judge told you what you had to do, right?

11:34AM 8 A Correct.

11:34AM 9 Q And one of those conditions was post a bond.

11:34AM 10 A Yes.

11:34AM 11 Q So you had to put up \$5,000, right?

11:34AM 12 A Correct.

11:34AM 13 Q GPS monitoring, right?

11:34AM 14 A Yes.

11:34AM 15 Q So the authorities would know where you would go, right?

11:34AM 16 A Yes.

11:34AM 17 Q And the authorities being something called pretrial

11:34AM 18 services, right?

11:34AM 19 A Yes.

11:34AM 20 Q So that's someone who is monitoring what you are doing on

11:34AM 21 the outside to determine whether you are meeting the judge's

11:34AM 22 orders, right?

11:34AM 23 A Yes.

11:34AM 24 Q Later, you also had a home detention at that time,

11:34AM 25 correct?

11:34AM 1 A Yes.

11:34AM 2 Q But you were able to get a job, right?

11:34AM 3 A Yes.

11:34AM 4 Q And so later, that home detention was lifted?

11:35AM 5 A Yes.

11:35AM 6 Q And so you had a curfew, right?

11:35AM 7 A Correct.

11:35AM 8 Q But other than that, as you said yesterday, you were free?

11:35AM 9 A Yes.

11:35AM 10 Q So you were able to go back to your children, right?

11:35AM 11 A Yes.

11:35AM 12 Q You were able to resume work?

11:35AM 13 A Able to find work, yes.

11:35AM 14 Q And you weren't in custody anymore?

11:35AM 15 A No.

11:35AM 16 Q And that's how it was from July 21, 2020, until April 4th

11:35AM 17 of 2023, correct?

11:35AM 18 A Yes.

11:35AM 19 Q Now, on April 4th, 2023, something else happened, didn't

11:35AM 20 it?

11:35AM 21 A Yes.

11:35AM 22 Q You were at home, right?

11:35AM 23 A I was at home.

11:35AM 24 Q You learned that there was a new arrest warrant, right?

11:35AM 25 A Yes.

11:35AM 1 Q But unlike the last time, you weren't able to back out of  
11:35AM 2 your house, were you?  
11:35AM 3 A No.  
11:35AM 4 Q There was a SWAT team surrounding your house with a  
11:36AM 5 perimeter, correct?  
11:36AM 6 A Yes.  
11:36AM 7 Q And at 6:01 a.m., the SWAT team announced its presence,  
11:36AM 8 right?  
11:36AM 9 A Yes.  
11:36AM 10 Q They were using emergency lights, correct?  
11:36AM 11 A I don't remember, sir.  
11:36AM 12 Q You didn't see those emergency lights? You heard the  
11:36AM 13 sirens, though, right?  
11:36AM 14 A I actually I was in my back bedroom and my -- Joyce had to  
11:36AM 15 tell me that somebody was on the bullhorn calling my name  
11:36AM 16 outside.  
11:36AM 17 Q And that person could look out and see an armored vehicle,  
11:36AM 18 right?  
11:36AM 19 A She said that they announced themselves as the FBI.  
11:36AM 20 Q And it was being used on the armored vehicle's  
11:36AM 21 loudspeaker, correct?  
11:36AM 22 A Correct.  
11:36AM 23 Q And they had to make multiple announcements on the armored  
11:36AM 24 vehicle SWAT team before you came out, correct?  
11:37AM 25 A Yes.

11:37AM 1 Q And after hearing multiple times for you to leave your  
11:37AM 2 residence, you finally walked out.  
11:37AM 3 A Well, I walked out once I heard them call my name.  
11:37AM 4 Q So only when you heard your name. The earlier  
11:37AM 5 announcements by the SWAT team, you weren't coming out of the  
11:37AM 6 house, right?  
11:37AM 7 A I didn't hear those earlier.  
11:37AM 8 Q You didn't hear the sirens?  
11:37AM 9 A I heard the sirens, but I didn't hear them calling my  
11:37AM 10 name.  
11:37AM 11 Q You didn't hear the loudspeaker?  
11:37AM 12 A I didn't hear a loudspeaker, sir.  
11:37AM 13 Q You walked out without a shirt, didn't you?  
11:37AM 14 A Yes.  
11:37AM 15 Q SWAT members then grabbed you?  
11:37AM 16 A No.  
11:37AM 17 Q Didn't the SWAT members then walk up, knock on the door,  
11:38AM 18 and ask for a shirt, sir?  
11:38AM 19 A That happened after I was down in custody next to the SWAT  
11:38AM 20 vehicle.  
11:38AM 21 Q And when you were next to the SWAT vehicle, someone put  
11:38AM 22 the shirt on you at that time, because you weren't even trusted  
11:38AM 23 with a shirt in that arrest, were you?  
11:38AM 24 A I don't understand the question.  
11:38AM 25 Q Normally you just put on your shirt. They physically put

11:38AM 1 the shirt on you because you were under arrest for witness  
11:38AM 2 tampering with a SWAT team there making certain your every move  
11:38AM 3 was under their control, correct?  
11:38AM 4 MR. AKINA: Objection as to speculation, asking the  
11:38AM 5 witness to speculate as to what the SWAT team was thinking.  
11:38AM 6 THE COURT: Overruled, go ahead.  
11:38AM 7 THE WITNESS: Yes.  
11:38AM 8 BY MR. KENNEDY:  
11:38AM 9 Q And at that point finally, the SWAT team members turned  
11:38AM 10 you over to the FBI?  
11:39AM 11 A I was put in an unmarked -- looked like a Honolulu police  
11:39AM 12 department vehicle.  
11:39AM 13 Q And then you were taken back to the Federal Detention  
11:39AM 14 Center, correct?  
11:39AM 15 A Correct.  
11:39AM 16 Q You were put back into the SHU, right?  
11:39AM 17 A Yes.  
11:39AM 18 Q Special housing unit, correct?  
11:39AM 19 A Yes.  
11:39AM 20 Q Lockdown, correct?  
11:39AM 21 A Yes.  
11:39AM 22 Q Now, you were placed there because there had been a  
11:39AM 23 criminal complaint for witness tampering filed against you by  
11:39AM 24 the prosecutors and the FBI, correct?  
11:39AM 25 A Yes.

11:39AM 1 Q And you'd been in meetings now with FBI special agent  
11:40AM 2 Mr. Palmer, correct?  
11:40AM 3 A Correct.  
11:40AM 4 Q He was the one who signed out the affidavit for the court  
11:40AM 5 to arrest you for witness tampering, correct?  
11:40AM 6 A Correct.  
11:40AM 7 Q That charged you -- that charge was that you were knowing  
11:40AM 8 use of intimidation, threatened, and corruptly persuading Sunny  
11:40AM 9 Kim in violation of federal law, right?  
11:40AM 10 A Yes.  
11:40AM 11 Q Your lawyer is here today, correct?  
11:40AM 12 A Yes.  
11:40AM 13 Q And so one of the things you learn about a charge is you  
11:40AM 14 learned that you could go to jail -- prison, for up to 20 years  
11:40AM 15 for that charge?  
11:40AM 16 A Yes.  
11:40AM 17 Q Now, on December 16th of 2023, you went to The Pig and the  
11:41AM 18 Lady, correct?  
11:41AM 19 A Correct.  
11:41AM 20 Q The Pig and the Lady is a restaurant here in Honolulu,  
11:41AM 21 correct?  
11:41AM 22 A Yes.  
11:41AM 23 Q It's in Chinatown?  
11:41AM 24 A Correct.  
11:41AM 25 Q There was a table in the back, right, where you sat?

11:41AM 1 A Yes.

11:41AM 2 Q There is a front bar area and a back bar area and then a  
11:41AM 3 table in the back?

11:41AM 4 A There were tables in the back, yes.

11:41AM 5 THE COURT: Are you sure you have the date right,  
11:41AM 6 counsel?

11:41AM 7 MR. KENNEDY: I think it's December 16, 2022, if I  
11:41AM 8 misspoke.

11:41AM 9 THE COURT: Yes.

11:41AM 10 MR. KENNEDY: I apologize. Thank you for catching  
11:41AM 11 that, Your Honor. I didn't mean to mislead you. Sometimes you  
11:41AM 12 just can't keep all the dates in your head. So it's not the  
11:41AM 13 23rd; it's December 16, 2022. I apologize, sir.

11:41AM 14 BY MR. KENNEDY:

11:41AM 15 Q Now, you had reached out to Sunny to have that meeting,  
11:42AM 16 right?

11:42AM 17 A Yes.

11:42AM 18 Q And at that meeting, you told Sunny the FBI would likely  
11:42AM 19 be approaching her, right?

11:42AM 20 A Yes.

11:42AM 21 Q You told Sunny it would be better for her and her dad if  
11:42AM 22 she told the FBI nothing about you?

11:42AM 23 A That is not accurate, sir.

11:42AM 24 Q You're telling the ladies and gentlemen of the jury that  
11:42AM 25 you didn't tell her that?

11:42AM 1 A I'm saying that I don't remember saying that.

11:42AM 2 Q Okay. That's different. You don't remember saying that.

11:42AM 3 But if someone was told that, that the FBI -- it would be

11:42AM 4 better for her and her dad if she told the FBI nothing about

11:42AM 5 you, that's something you might remember, right?

11:42AM 6 A Yes.

11:42AM 7 Q But you don't even remember whether you said it, correct?

11:42AM 8 A Yes, that's correct.

11:43AM 9 Q Okay. So you cannot tell these folks under oath whether

11:43AM 10 you told her that that day or not, can you?

11:43AM 11 A No, I can't.

11:43AM 12 Q You told her that she and her dad was the connection to

11:43AM 13 you involving the kidnapping, correct?

11:43AM 14 A Yes.

11:43AM 15 Q And that was the kidnapping of Mr. Lee, correct?

11:43AM 16 A Yes.

11:43AM 17 Q And that's why you went to talk with her; not about some

11:43AM 18 business thing, correct?

11:43AM 19 A No, we talked about the business thing.

11:43AM 20 Q Oh, I understand, but you hadn't reached out to her in a

11:43AM 21 long time, had you?

11:43AM 22 A No, I hadn't.

11:43AM 23 Q What was on your mind was that she was the connection to

11:43AM 24 what you did in the kidnapping, correct?

11:43AM 25 A Yes.



11:43AM 1 Q And you told Sunny Kim that you would know if she was  
11:44AM 2 cooperating with the FBI, correct?  
11:44AM 3 A I did not tell her that.  
11:44AM 4 Q You didn't tell her that?  
11:44AM 5 A I did not tell her that.  
11:44AM 6 Q You reminded Sunny Kim that you knew where she lived and  
11:44AM 7 where she worked, correct?  
11:44AM 8 A That is not correct.  
11:44AM 9 Q And you told her that you knew where her children went to  
11:44AM 10 school, correct?  
11:44AM 11 A That is not correct.  
11:44AM 12 Q And you did know where she worked, right?  
11:44AM 13 A I didn't know where she worked.  
11:44AM 14 Q I thought you had done all this business work with her  
11:44AM 15 prior; isn't that correct?  
11:44AM 16 A We asked for rental properties -- leasing properties.  
11:44AM 17 Q You had fumigated her home, right?  
11:44AM 18 A Yes.  
11:44AM 19 Q You had discussed business opportunities with her?  
11:44AM 20 A Yes.  
11:44AM 21 Q You had known her for 12 or 13 years at that time?  
11:45AM 22 A Yes.  
11:45AM 23 Q Between, say, 2007 and 2013 on Wednesdays, Thursdays,  
11:45AM 24 Fridays, and Saturdays, you would go out with her, right?  
11:45AM 25 A No, sir. I don't remember that.

11:45AM 1 Q You don't remember all those times that the two of you had  
11:45AM 2 spent together during that time?  
11:45AM 3 A No, I don't, sir.  
11:45AM 4 Q You just don't remember it?  
11:45AM 5 A I don't recall, or I don't remember doing that.  
11:45AM 6 Q So once again under oath, you can't tell the ladies and  
11:45AM 7 gentlemen of this jury whether that's true or not, right?  
11:45AM 8 A No.  
11:45AM 9 Q So if we pull up -- just show the witness 9010-037.  
11:46AM 10 Do you recognize that, sir?  
11:46AM 11 A Yes.  
11:46AM 12 Q What is it?  
11:46AM 13 A It looks to be GPS tracking on myself.  
11:46AM 14 Q And so this is GPS tracking on your cell phone on  
11:46AM 15 December 16, 2022?  
11:46AM 16 A Yes.  
11:46AM 17 Q The time for the lunch was between about 11:30 and 1:30  
11:46AM 18 with Sunny Kim?  
11:46AM 19 A Correct.  
11:46AM 20 MR. KENNEDY: Your Honor, at this time, I would move  
11:46AM 21 9010-037 into evidence.  
11:46AM 22 THE COURT: Mr. Akina, any objection?  
11:46AM 23 MR. AKINA: Object to lack of foundation for this  
11:46AM 24 particular document.  
11:47AM 25 THE COURT: Sustained.

11:47AM 1 BY MR. KENNEDY:

11:47AM 2 Q Let me ask you this, sir: In the context of before you

11:47AM 3 made the agreement with the government that they discussed, did

11:47AM 4 you receive information about your case?

11:47AM 5 A I don't understand the question.

11:47AM 6 Q Probably a bad one. You get documents and things called

11:47AM 7 discovery when you are charged, correct?

11:47AM 8 A Yes.

11:47AM 9 Q And among that is, here's the evidence they have, correct?

11:47AM 10 A Correct.

11:47AM 11 Q And so if someone tells them, hey, I had a meeting at the

11:47AM 12 Pig and the Lady on December 16th, of 2022 with Mr. Kimoto,

11:47AM 13 it's just their word, right?

11:47AM 14 A Yes.

11:47AM 15 Q But if they can track GPS on a phone, right? You are

11:47AM 16 aware of that?

11:47AM 17 A Yes.

11:47AM 18 Q And the phone is then pinging on towers, correct?

11:48AM 19 A Yes.

11:48AM 20 Q And so they can see where your phone went in the vicinity

11:48AM 21 at that same time, right?

11:48AM 22 A Yes.

11:48AM 23 Q And so that's some real evidence beyond what someone is

11:48AM 24 just saying that you were there, right?

11:48AM 25 A Yes.

11:48AM 1 Q And that's exactly what 9010-037 is, correct?

11:48AM 2 A Yes.

11:48AM 3 Q And so you reviewed it, and so you knew that they knew

11:48AM 4 that you had met with her on that day on December 16, 2022?

11:48AM 5 A Yes.

11:48AM 6 Q A credit card was used to pay at the Pig and the Lady,

11:48AM 7 correct?

11:48AM 8 A Yes.

11:48AM 9 Q Did you pay?

11:48AM 10 A I did pay.

11:48AM 11 Q Okay. So you learned that they had gone and in this

11:48AM 12 investigation, the FBI had a copy of your credit card receipt,

11:49AM 13 correct?

11:49AM 14 A Yes.

11:49AM 15 Q And so you knew they had what Sunny Kim told them, the GPS

11:49AM 16 that showed you there, and your credit card receipt, right?

11:49AM 17 A Yes.

11:49AM 18 Q Hard evidence, right, backing her up, correct?

11:49AM 19 A Yes.

11:49AM 20 MR. KENNEDY: At this time, I'd move 9010-037 into

11:49AM 21 evidence.

11:49AM 22 THE COURT: Mr. Akina.

11:49AM 23 MR. AKINA: Same objection, Your Honor. Still lack of

11:49AM 24 foundation.

11:49AM 25 THE COURT: Same ruling, sustained.

11:49AM 1 BY MR. KENNEDY:

11:49AM 2 Q Moving on to December 28th of 2022. You reached out to

11:49AM 3 Sunny Kim again prior to that time, correct?

11:49AM 4 A Yes.

11:49AM 5 Q You wanted to meet with her a second time, right?

11:50AM 6 A Yes.

11:50AM 7 Q Just less than two weeks later, correct?

11:50AM 8 A Yes.

11:50AM 9 Q Because there was something new, right?

11:50AM 10 A Yes.

11:50AM 11 Q It came from a public filing, right?

11:50AM 12 A Yes.

11:50AM 13 Q And the public filing identified you, right?

11:50AM 14 A I don't remember, sir.

11:50AM 15 Q It identified Ms. Kim, right? Sunny?

11:50AM 16 A From what I received, I only recognized her father's name.

11:50AM 17 Q And her father, Mr. Kim?

11:50AM 18 A Yes.

11:50AM 19 Q And so you set up a meeting at a park here in Honolulu,

11:50AM 20 right?

11:50AM 21 A Yes.

11:50AM 22 Q And at that meeting, she agreed to meet with you again,

11:50AM 23 right?

11:50AM 24 A Yes.

11:50AM 25 Q And you told Sunny Kim she should not talk to law

11:51AM 1 enforcement about you?

11:51AM 2 A I don't remember using those exact words, but I did tell  
11:51AM 3 her that law enforcement knew who her father was so they were  
11:51AM 4 probably going to go and question him.

11:51AM 5 Q And you told Sunny Kim that if she did that, not talk to  
11:51AM 6 law enforcement about you, she would not have to worry about  
11:51AM 7 you, correct?

11:51AM 8 A That is not correct.

11:51AM 9 Q And you told her she didn't have to worry about you having  
11:51AM 10 someone coming to her home, correct?

11:51AM 11 A That is not correct.

11:51AM 12 Q And you told her she didn't have to worry about someone  
11:51AM 13 coming to the school that her children attended, correct?

11:51AM 14 A That is not correct.

11:52AM 15 Q And all of those things were in the sworn affidavit by the  
11:52AM 16 FBI against you?

11:52AM 17 A Yes.

11:52AM 18 Q Knowing that at a certain time, you agreed to cooperate  
11:52AM 19 with the prosecution and the FBI, correct?

11:52AM 20 A Yes.

11:52AM 21 Q And so far, in return for that cooperation, the charge of  
11:52AM 22 witness tampering, which you can do up to 20 years, has been  
11:53AM 23 dismissed without prejudice, correct?

11:53AM 24 A Yes.

11:53AM 25 Q And dismissed means gone, right?

11:53AM 1 A Yes.

11:53AM 2 Q Without prejudice means they can still bring that charge  
11:53AM 3 back against you, right?

11:53AM 4 A Yes.

11:53AM 5 Q And so they make that determination themselves, correct?

11:53AM 6 A Yes.

11:53AM 7 Q Based upon your testimony, correct?

11:53AM 8 A I'm not sure, sir.

11:53AM 9 Q You know that.

11:53AM 10 MR. AKINA: Objection, 403. This is misleading.

11:53AM 11 THE COURT: Sustained.

11:54AM 12 BY MR. KENNEDY:

11:54AM 13 Q You would understand it's a factor, wouldn't you?

11:54AM 14 MR. AKINA: Same objection, Your Honor.

11:54AM 15 THE COURT: Sustained.

11:54AM 16 BY MR. KENNEDY:

11:54AM 17 Q Didn't the order say that you are also cooperating, and  
11:54AM 18 that's why it's being dismissed without prejudice?

11:54AM 19 A From my understanding, yes.

11:54AM 20 Q Now, you were charged with drug distribution, conspiracy  
11:54AM 21 in Count 16 of the third superseding indictment, correct?

11:54AM 22 A Yes.

11:54AM 23 Q You know an individual by the name of Kevin Balatico,  
11:54AM 24 correct?

11:54AM 25 A Correct.

11:55AM 1 Q Kevin Balatico was someone who was meeting with you

11:55AM 2 regularly, correct?

11:55AM 3 A Yes.

11:55AM 4 Q This began in June of 2016?

11:55AM 5 A I've known Kevin before that. We met at the gym playing

11:55AM 6 basketball and we had gambling in common.

11:55AM 7 Q Okay. So you played hoop with him, right?

11:55AM 8 A Yes.

11:55AM 9 Q You worked out with him at the gym?

11:55AM 10 A Not worked out.

11:55AM 11 Q You just knew him from the gym?

11:55AM 12 A Correct.

11:55AM 13 Q And the two of you both gambled?

11:55AM 14 A Yes.

11:55AM 15 Q On sports?

11:55AM 16 A Yes.

11:55AM 17 Q Often?

11:55AM 18 A For myself, yes.

11:55AM 19 Q And that's the illegal gambling that you discussed earlier

11:55AM 20 today?

11:55AM 21 A Correct.

11:55AM 22 Q All right. So this isn't like a sports book in Las Vegas

11:55AM 23 where it's legal; this is illegal gaming here?

11:56AM 24 A Yes.

11:56AM 25 Q Now, you, in the process of making determinations to



11:56AM 1 cooperate with the government, you received information in your  
11:56AM 2 discovery about Kevin Balatico, correct?

11:56AM 3 A Yes.

11:56AM 4 Q That he was cooperating with the government, correct?

11:56AM 5 A Yes.

11:56AM 6 Q And that he was making phone calls to you, correct?

11:56AM 7 A Yes.

11:56AM 8 Q With the FBI listening to those phone calls and recording  
11:56AM 9 them, correct?

11:56AM 10 A Yes.

11:56AM 11 Q He would meet with you and he would wear a body camera,  
11:56AM 12 which recorded what you were saying and what you were doing,  
11:57AM 13 right?

11:57AM 14 A Yes.

11:57AM 15 Q And were you aware that there were, in the course of this  
11:57AM 16 time, that went from June of 2016 through November of 2017 --

11:57AM 17 A Yes.

11:57AM 18 Q -- and there were upwards of maybe 40 or more times that  
11:57AM 19 he either called you or you were recorded by audio or video,  
11:57AM 20 correct?

11:57AM 21 A Yes.

11:57AM 22 Q And that's what you were facing in Count 16 for the drug  
11:57AM 23 distribution, right?

11:57AM 24 A Yes.

11:57AM 25 Q That charge carried potentially a maximum of life, right?

11:57AM 1 A Yes.

11:57AM 2 Q All right. Now, what you've told the jury about Mr. Lee

11:58AM 3 isn't the first time you and Sunny Kim have talked or dealt

11:58AM 4 with a debt owed Ms. Kim, correct?

11:58AM 5 A I don't remember.

11:58AM 6 Q Does the name Bin Lee strike a bell?

11:58AM 7 A Yes.

11:58AM 8 Q Bin Lee owed Sunny Kim and Tony Kim money, correct?

11:58AM 9 A That is not correct.

11:58AM 10 Q Owed Sunny Kim money, correct?

11:58AM 11 A That is not correct.

11:58AM 12 Q That is not correct?

11:58AM 13 A That is not correct, sir.

11:58AM 14 Q So you weren't going to collect money for Sunny Kim?

11:59AM 15 A No, sir.

11:59AM 16 Q You were going to collect money for someone else?

11:59AM 17 A No. Somebody else had -- another female had asked me if I  
11:59AM 18 could help them.

11:59AM 19 Q Okay. Another female had come to you and said, someone

11:59AM 20 owes me money; can you get someone to go collect it, correct?

11:59AM 21 A Not in those particular words, sir.

11:59AM 22 Q And you discussed this with Mr. Balatico, correct?

11:59AM 23 A I didn't discuss that with -- I asked him a question, if  
11:59AM 24 he knew that person.

11:59AM 25 Q If he knew that person?

11:59AM 1 A Correct.

11:59AM 2 Q You didn't talk about the fact that you were going to do  
11:59AM 3 it even if she didn't know?

11:59AM 4 A I don't remember.

11:59AM 5 Q All right.

11:59AM 6 MR. KENNEDY: Your Honor, at this time I ask

11:59AM 7 permission to play 9010-081 for state of mind in terms of

12:00PM 8 Mr. Kimoto.

12:00PM 9 MR. AKINA: Objection; lack of foundation.

12:00PM 10 THE COURT: I'm not sure what that is right now.

12:00PM 11 MR. KENNEDY: Sir, it's you've seen it.

12:00PM 12 THE COURT: Mr. Kennedy, I'm happy to take a look at  
12:00PM 13 it. We are right at the noon hour.

12:00PM 14 MR. KENNEDY: Sure, that would be fine.

12:00PM 15 THE COURT: Would we be able to take a break?

12:00PM 16 MR. KENNEDY: Absolutely.

12:00PM 17 THE COURT: Okay. So let's go ahead and take our  
12:00PM 18 second afternoon break. I try to space these in appropriate  
12:00PM 19 ways. So as we go to break, I'll remind our jurors to refrain  
12:00PM 20 from discussing the substance of this case with anyone  
12:00PM 21 including one another; to also refrain from conducting any  
12:00PM 22 independent investigation into the facts, circumstances, or  
12:00PM 23 persons involved; and then finally, please do not access any  
12:00PM 24 media or other accounts of this case that may be out there.

12:00PM 25 So let's try to keep it to about a 15-minute break,

12:00PM 1 and if I could see counsel at sidebar, please.

12:00PM 2 (The jury was excused at 12:01 p.m. and the following  
12:01PM 3 proceedings were held in open court:)

12:01PM 4 THE COURT: You can take the witness. Thank you. If  
12:01PM 5 I could see counsel at sidebar, even though the jury is gone, I  
12:01PM 6 understand.

12:01PM 7 (Sidebar on the record:)

12:01PM 8 THE COURT: Just briefly, counsel, there is a person  
12:01PM 9 in the gallery who I'm not sure who it is. It's a female, and  
12:01PM 10 for three days now, she has had coughing fits that -- I don't  
12:02PM 11 know if you all have.

12:02PM 12 ATTORNEY PANEL: I've heard it.

12:02PM 13 THE COURT: Well, she is not wearing a mask, and so  
12:02PM 14 that's one concern. The coughing fits, though, have also been  
12:02PM 15 disruptive, at least for me, and I assume for others, including  
12:02PM 16 the jury, in terms of listening to the testimony. So I don't  
12:02PM 17 know if you can help me identify who this person is. I don't  
12:02PM 18 want to embarrass her, is all I'm after. So if she is  
12:02PM 19 affiliated with one of your sides, if you wouldn't mind asking  
12:02PM 20 her to perhaps wear a mask and to remove herself from the  
12:02PM 21 courtroom if these coughing fits arise.

12:02PM 22 That's all I'm asking for now. If it gets to be more  
12:02PM 23 disruptive, then we will see where we have to go with it. I  
12:02PM 24 don't want to go crazy with it for the time being. Do you know  
12:02PM 25 who I'm talking about.

12:02PM 1 MR. INCIONG: I wanted to turn to see who it was. I  
12:02PM 2 didn't, but we can ask our agent who is seated back there.  
12:02PM 3 THE COURT: Okay. I don't know who she is. Well, if  
12:02PM 4 you notice it --  
12:03PM 5 MR. KENNEDY: She is in the courtroom now, Your Honor?  
12:03PM 6 THE COURT: I'm not a hundred percent because I don't  
12:03PM 7 always look up to see. I can hear it.  
12:03PM 8 MR. KENNEDY: If you look, everybody looks.  
12:03PM 9 THE COURT: I think the answer is yes, but I'm not a  
12:03PM 10 hundred percent sure; I can't swear to it. I don't look up  
12:03PM 11 when I hear the coughing. I've done it a couple of times but  
12:03PM 12 not enough to be comfortable that I have the right person. If  
12:03PM 13 you notice it in the future, if you could perhaps help me  
12:03PM 14 identify her. And again, the main thing is I don't want to  
12:03PM 15 embarrass her. I don't want to call her out. If there is a  
12:03PM 16 professional way of handling it, that's what I'm asking.  
12:03PM 17 MR. INCIONG: Certainly. Thank you.  
12:03PM 18 (End of side bar.)  
12:25PM 19 (Proceedings were recessed at 12:03 p.m. to 12:25 a.m.)  
12:25PM 20 THE COURT: All right. Back from our second break of  
12:25PM 21 the trial day. Mr. Kimoto is back on the stand and Mr. Kennedy  
12:25PM 22 is in the midst of his cross-examination. So where were we  
12:25PM 23 when you left? You were marking an exhibit that I think you  
12:25PM 24 had identified but I have forgotten now.  
12:25PM 25 MR. KENNEDY: It's 9010-081, Your Honor, and it's an

12:25PM 1 audio and video exhibit.

12:25PM 2 THE COURT: 9010-081.

12:25PM 3 MR. KENNEDY: I believe you probably have a place  
12:25PM 4 holder.

12:25PM 5 THE COURT: It's identified on the supplemental  
12:25PM 6 exhibit list that was filed yesterday.

12:25PM 7 Okay. And Mr. Akina, you had some thoughts on this  
12:25PM 8 particular exhibit?

12:25PM 9 MR. AKINA: Given that it's an audio/visual, one, I  
12:25PM 10 believe this is improper impeachment. The witness had been  
12:25PM 11 asked the question about a prior statement and he said I do not  
12:26PM 12 recall. So if this is to refresh the witness's recollection,  
12:26PM 13 that's one thing. I have an issue of doing that since it's  
12:26PM 14 audio/video, playing that in front of the jury since you can't  
12:26PM 15 take that back. If it's for some other issue, I think a little  
12:26PM 16 more foundation needs to be laid to identify who is in it.

12:26PM 17 THE COURT: I agree that some additional foundational  
12:26PM 18 questions should be asked before I am able to actually rule on  
12:26PM 19 this objection that the government is making.

12:26PM 20 BY MR. KENNEDY:

12:26PM 21 Q Sir, do you recall watching a video of meeting with  
12:26PM 22 Mr. Balatico and yourself, and the subject of Bin Kim came up?

12:26PM 23 A Not Bin Kim, sir.

12:26PM 24 Q Bin Lee?

12:26PM 25 A Yes.

12:26PM 1 Q All right. And with respect to that, you had a  
12:26PM 2 conversation with Mr. Balatico, correct?  
12:27PM 3 A Yes.  
12:27PM 4 Q And this individual was Bin Lee?  
12:27PM 5 A Yes.  
12:27PM 6 Q Not to be confused with Robert Lee, correct?  
12:27PM 7 A Correct.  
12:27PM 8 Q The accountant that we have been talking about?  
12:27PM 9 A Yes.  
12:27PM 10 Q Okay. So this is another individual with the last name of  
12:27PM 11 Lee; first name, Bin?  
12:27PM 12 A Correct.  
12:27PM 13 Q And in that conversation with Mr. Balatico, he and you are  
12:27PM 14 discussing collecting a debt, correct?  
12:27PM 15 A I believe so.  
12:27PM 16 Q And so this was captured by Mr. Balatico working for the  
12:27PM 17 FBI regarding debt collection that you were discussing with  
12:27PM 18 their informant Mr. Balatico, correct?  
12:27PM 19 A Yes.  
12:27PM 20 MR. KENNEDY: And so Your Honor, at this time I'd  
12:27PM 21 offer 9010-081.  
12:28PM 22 MR. AKINA: Object, improper impeachment.  
12:28PM 23 MR. KENNEDY: Your Honor, it's for state of mind,  
12:28PM 24 8033. Mr. Kimoto testified that he was just doing a favor for  
12:28PM 25 Ms. Sunny Kim. And now we are talking about collecting money

12:28PM 1 and being paid for it on a prior occasion.

12:28PM 2 THE COURT: I'm not sure what the relevance of this  
12:28PM 3 is.

12:28PM 4 MR. KENNEDY: The relevance is, is that he is being  
12:28PM 5 recorded by the FBI for a debt collection extortion prior to  
12:28PM 6 the kidnapping for which he is charged with. And that's why  
12:28PM 7 they were discussing it. It goes to his state of mind under  
12:28PM 8 8033 prior to.

12:28PM 9 MR. AKINA: Your Honor, this is extrinsic evidence of  
12:28PM 10 a collateral matter. There is nothing really that needs to be  
12:29PM 11 impeached at this point.

12:29PM 12 THE COURT: The objection is sustained.

12:29PM 13 BY MR. KENNEDY:

12:29PM 14 Q With respect to that discussion, that's exactly what you  
12:29PM 15 were trying to do, correct?

12:29PM 16 A No, sir.

12:29PM 17 Q You weren't trying to obtain a debt collection?

12:29PM 18 A No. In regards to discussing it with Mr. Balatico, it was  
12:29PM 19 a question if he knew who Bin Lee was.

12:29PM 20 Q All right.

12:29PM 21 A We didn't go into any planning or anything like that, sir.

12:29PM 22 Q You didn't say if she doesn't want to do it, I'm going to  
12:29PM 23 do it anyway?

12:29PM 24 A I don't recall saying that, sir.

12:29PM 25 Q That would go beyond just planning.



12:29PM 1 You were saying you were just trying to find something  
12:29PM 2 out, but -- and this was for another girlfriend, correct?  
12:29PM 3 A This was a female friend.  
12:29PM 4 Q A female friend who was owed a substantial amount of  
12:30PM 5 money, correct?  
12:30PM 6 A Yes.  
12:30PM 7 Q You asked Mr. Balatico whether he knew somebody, right?  
12:30PM 8 A Yes.  
12:30PM 9 Q You were going to do it anyway, whether your friend wanted  
12:30PM 10 it, to collect the money, correct?  
12:30PM 11 A Not correct.  
12:30PM 12 Q All right. You didn't say "I'm going to do it anyway even  
12:30PM 13 if she doesn't want to"?  
12:30PM 14 A I don't recall saying that.  
12:30PM 15 MR. KENNEDY: Your Honor, at this time I would offer  
12:30PM 16 9010-081.  
12:30PM 17 THE COURT: Mr. Akina?  
12:30PM 18 MR. AKINA: If it's for the purpose of refreshing the  
12:30PM 19 witness's recollection. The only issue is playing it in front  
12:30PM 20 of the jury.  
12:30PM 21 THE COURT: Is that what the purpose is? It doesn't  
12:30PM 22 seem like it.  
12:30PM 23 MR. AKINA: That's the only objection that I have,  
12:30PM 24 Your Honor.  
12:30PM 25 MR. KENNEDY: I can refresh his recollection by doing

12:31PM 1 it.

12:31PM 2 THE COURT: Is that the purpose, though, that this  
12:31PM 3 exhibit is being offered for.

12:31PM 4 MR. KENNEDY: It's offered, as I said, as his state of  
12:31PM 5 mind prior to --

12:31PM 6 THE COURT: Objection is sustained.

12:31PM 7 BY MR. KENNEDY:

12:31PM 8 Q So you just don't recall right now, correct?

12:31PM 9 A Yes.

12:31PM 10 Q All right. Now, did you also discuss with Mr. Balatico  
12:31PM 11 investing in a game room -- in the illegal game room?

12:31PM 12 A I did not discuss doing any business with an illegal game  
12:31PM 13 room.

12:31PM 14 Q You didn't talk about whether Sunny Kim would bankroll you  
12:31PM 15 with Mr. Balatico?

12:31PM 16 A No, sir, I don't remember that.

12:31PM 17 Q You don't recall watching an exhibit that was video and  
12:31PM 18 audio recorded where that was the case?

12:31PM 19 A I watched that video -- I watched numerous videos, and it  
12:32PM 20 was a long time ago that I had watched that, viewed it.

12:32PM 21 Q You were talking about bankrolling a game room?

12:32PM 22 A No, sir, I wasn't talking about bankrolling a game room.

12:32PM 23 Q You weren't talking about knowing someone who would put up  
12:32PM 24 the cash, but you wouldn't?

12:32PM 25 A No, sir, I don't recall that.

12:32PM 1 Q All right.

12:32PM 2 MR. KENNEDY: At this time I would offer 9010-080

12:32PM 3 which is an audio video exhibit by the FBI informant,

12:32PM 4 Mr. Balatico.

12:32PM 5 THE COURT: Mr. Akina.

12:32PM 6 MR. AKINA: Same objection on relevance grounds, this

12:32PM 7 is the same topic.

12:32PM 8 THE COURT: Same ruling.

12:32PM 9 BY MR. KENNEDY:

12:32PM 10 Q All right. You were charged with, in Count 16, dealing

12:33PM 11 with Mr. Balatico, correct?

12:33PM 12 A Can you repeat the question.

12:33PM 13 Q Yeah. You are charged with distribution of drugs that we

12:33PM 14 discussed before, which was before the jury in Count 16,

12:33PM 15 correct?

12:33PM 16 A Yes.

12:33PM 17 Q A conspiracy to do so, correct?

12:33PM 18 A Yes.

12:33PM 19 Q All right. And in those conversations, I take it that you

12:33PM 20 went over those with your attorney prior to deciding whether to

12:33PM 21 cooperate with the government, didn't you?

12:33PM 22 A In all honesty, that was the least of what we thought

12:33PM 23 about. We didn't think the drug conspiracy was a big thing.

12:33PM 24 Q So you didn't care that the FBI had spent from June 11th

12:34PM 25 of 2016 to November of 2017, almost 16 months making recordings

12:34PM 1 of you about that; you just didn't care?

12:34PM 2 A It was marijuana vape pens and I didn't -- well, we didn't  
12:34PM 3 think that it was a big deal.

12:34PM 4 Q Sir, I understand in some states it's legal, correct?

12:34PM 5 A Yes.

12:34PM 6 Q Like Nevada, right?

12:34PM 7 A I'm not sure.

12:34PM 8 Q But it's a federal law, right?

12:34PM 9 A Yes.

12:34PM 10 Q You are charged with it, right?

12:34PM 11 A Yes.

12:34PM 12 Q It was in the indictment, correct?

12:34PM 13 A Correct.

12:34PM 14 Q And so during that time, they made, as you said, more than  
12:34PM 15 40 recordings of you involved with drug distribution, right?

12:34PM 16 MR. AKINA: Objection. That's not what the witness  
12:35PM 17 said.

12:35PM 18 THE COURT: Overruled, go ahead.

12:35PM 19 THE WITNESS: Repeat the question, sir.

12:35PM 20 BY MR. KENNEDY:

12:35PM 21 Q There were more than 40 occasions where Mr. Balatico, over  
12:35PM 22 that year and a half time period, was making telephone calls  
12:35PM 23 which were recorded; video and audio recordings of you meeting  
12:35PM 24 during a year and a half, correct?

12:35PM 25 A Correct.

12:35PM 1 Q And you didn't care about that; that was fine?

12:35PM 2 A We really didn't spend too much time on that subject.

12:35PM 3 Q All right. Let's take a listen to some of those. So if

12:35PM 4 we move to Exhibit 9010-043, do you recall a series of phone

12:35PM 5 calls from June 11th to June 17th?

12:36PM 6 A I don't remember, but I'm sure if you showed me something,

12:36PM 7 then I could verify.

12:36PM 8 Q If you heard it, would you remember it?

12:36PM 9 A I'm not sure, sir.

12:36PM 10 Q All right.

12:36PM 11 MR. KENNEDY: At this time, I would offer 910-043.

12:36PM 12 THE COURT: To refresh his recollection?

12:36PM 13 MR. KENNEDY: To refresh his recollection, and then we  
12:36PM 14 can move on from there.

12:36PM 15 THE COURT: How are we going to do that?

12:36PM 16 MR. KENNEDY: Well, Your Honor, if the Court doesn't  
12:36PM 17 want to hear the audio, I can hand to him a transcript. He can  
12:36PM 18 review it and see if that refreshes his recollection.

12:36PM 19 THE COURT: I think that would be the preferred  
12:36PM 20 alternative.

12:36PM 21 MR. KENNEDY: May I approach, Your Honor? I'm showing  
12:36PM 22 what's been marked as 9010-043A. May I approach?

12:36PM 23 THE COURT: You may.

12:37PM 24 BY MR. KENNEDY:

12:37PM 25 Q It's printed on both sides. Would you take a look at the

12:37PM 1 paper, and look at that.

12:37PM 2 THE COURT: Mr. Akina, I gather the government has a  
12:37PM 3 copy of this 9010-43A that counsel just provided to the  
12:37PM 4 witness.

12:37PM 5 MR. AKINA: A copy was provided previously to the  
12:37PM 6 government, Your Honor.

12:38PM 7 THE WITNESS: I have read it.

12:38PM 8 BY MR. KENNEDY:

12:38PM 9 Q Do you recall that Mr. Balatico began calling you  
12:38PM 10 around -- on June 11th, 2016, and that you then were able to  
12:38PM 11 review an audio of that once it was produced to you in  
12:38PM 12 discovery?

12:38PM 13 A Yes. I'm sure it was in my -- I'm sure it was provided to  
12:38PM 14 me but I don't remember the conversation. There was numerous  
12:38PM 15 conversations provided.

12:38PM 16 Q Okay. With respect to that same day, the conversation  
12:38PM 17 begins at 6:15 in the evening.

12:38PM 18 Do you recall a second conversation at about nine that  
12:39PM 19 evening where you and Mr. Balatico discussed distributing  
12:39PM 20 drugs?

12:39PM 21 A I don't recall that, sir.

12:39PM 22 MR. KENNEDY: Your Honor, may I approach?

12:39PM 23 THE COURT: You may. Do you have another transcript?

12:39PM 24 MR. KENNEDY: I do. I'm showing you what's been  
12:39PM 25 previously marked as 9010-044A. It's printed on both sides to

12:39PM 1 save a little paper.

12:39PM 2 THE COURT: Mr. Akina, I gather once again that this  
12:39PM 3 is a document that you have.

12:39PM 4 MR. AKINA: Yes. It's been previously provided to the  
12:39PM 5 government, yes, Your Honor.

12:42PM 6 THE WITNESS: I've read through it.

12:42PM 7 MR. KENNEDY: May I approach, Your Honor?

12:42PM 8 THE COURT: Yes.

12:42PM 9 BY MR. KENNEDY:

12:42PM 10 Q Sir, viewing 9010-043A and 9010-044A, did that refresh  
12:42PM 11 your recollection about Mr. Balatico and you discussing drug  
12:43PM 12 dealing?

12:43PM 13 A Correct.

12:43PM 14 Q All right.

12:43PM 15 MR. KENNEDY: Your Honor, at this time I would move to  
12:43PM 16 play 9010-043, the audio. The jury can have the transcript  
12:43PM 17 which will follow on the screen, so that they can follow. And  
12:43PM 18 9010-044 audio.

12:43PM 19 MR. AKINA: Your Honor, the witness's recollection has  
12:43PM 20 been refreshed. I believe a question would be appropriate.

12:43PM 21 THE COURT: I do too. So the request is denied.

12:43PM 22 MR. KENNEDY: All right.

12:43PM 23 BY MR. KENNEDY:

12:43PM 24 Q So you're discussing selling drugs, right?

12:43PM 25 A We are discussing selling marijuana vape pens.

12:43PM 1 Q All right. Selling marijuana vape pens, correct?

12:43PM 2 A Yes.

12:43PM 3 Q You're going to get some for yourself, right?

12:43PM 4 A Am I going to get some for myself for use?

12:43PM 5 Q Yes.

12:43PM 6 A No.

12:43PM 7 Q Okay. So you're getting them to sell them to other people

12:44PM 8 for money?

12:44PM 9 A I'm getting it from Allen Lau and selling it to Kevin

12:44PM 10 Balatico.

12:44PM 11 Q Right. And you're discussing the fact that pretty soon

12:44PM 12 you're going to be doing ten units, right?

12:44PM 13 A That means ten vape pens.

12:44PM 14 Q And you're going to be making, maybe the first one was

12:44PM 15 just for a couple, and that was for around \$3,000, right?

12:44PM 16 A Right.

12:44PM 17 Q And so if you are doing ten, doing that times five, that's

12:44PM 18 around \$15,000 every week monies that would go to you and

12:44PM 19 Kevin, right?

12:44PM 20 A No, that is not correct, sir.

12:44PM 21 Q And so what you are discussing with him is that they have

12:44PM 22 already had a sample that you've given to them, correct?

12:44PM 23 A What we are discussing is I gave him two samples, and now

12:44PM 24 he is asking me -- I believe he is asking me for a few more

12:44PM 25 samples --



12:44PM 1 Q And pretty soon he says, "I have someone. I have somebody  
12:45PM 2 that will get ten a week every week, and we can be making that  
12:45PM 3 money during the week," right?  
12:45PM 4 A Ten vape pens, yes, sir.  
12:45PM 5 Q Right. So what this was about is you establishing a  
12:45PM 6 business relationship selling ten or so a week for about  
12:45PM 7 \$15,000 and banking that cash, right?  
12:45PM 8 A No, that is not correct, sir.  
12:45PM 9 Q Sharing it with Allen Lau, right?  
12:45PM 10 A The price for the vape pens were between 40 and \$50 so I  
12:45PM 11 don't know how you came up with ten vape pens for \$15,000. But  
12:45PM 12 that is inaccurate.  
12:45PM 13 Q Didn't you say it would be 29 in the recording?  
12:45PM 14 A I believe I did, yes.  
12:45PM 15 Q Right which was for two, right?  
12:45PM 16 A Well, I'm trying to think of the math right now, but there  
12:46PM 17 was no time when I sold those vape pens to Mr. Balatico that it  
12:46PM 18 came close to \$15,000.  
12:46PM 19 Q Because he wasn't buying that much, was he?  
12:46PM 20 A No, he picked up more than 29 at a time but it didn't come  
12:46PM 21 out to anywhere close to \$15,000.  
12:46PM 22 Q And you did this over the period of time of close to  
12:46PM 23 18 months, correct?  
12:46PM 24 A I met with Mr. Balatico a handful of times.  
12:46PM 25 Q And you sold to him about a half dozen times?

12:46PM 1 A About, a little less than a half dozen times.

12:46PM 2 Q I'm sorry?

12:46PM 3 A Less than a half dozen times.

12:46PM 4 Q You sold to him on several occasions, right?

12:46PM 5 A Correct.

12:46PM 6 Q You then were recorded on those occasions, right?

12:46PM 7 A Yes.

12:46PM 8 Q And so you knew that, once again, it wasn't just your word

12:46PM 9 or someone's word against you, right?

12:47PM 10 A Yes.

12:47PM 11 Q They had audio recordings of you doing it, right?

12:47PM 12 A Correct.

12:47PM 13 Q Video recordings of you doing it, right?

12:47PM 14 A Yes.

12:47PM 15 Q Once again, just like the situation with GPS and a receipt

12:47PM 16 regarding Sunny Lee and your threatening her on December 16th

12:47PM 17 of 2022?

12:47PM 18 A No. Not Sunny Lee, sir.

12:47PM 19 Q Sunny Kim. I apologize, Sunny Kim.

12:47PM 20 A Yes.

12:47PM 21 Q They also had text messages between you and Sunny Kim,

12:47PM 22 correct?

12:47PM 23 A Correct.

12:47PM 24 Q And you reviewed those, right?

12:47PM 25 A Yes.

12:47PM 1 Q And so they had GPS, text messages, all of that against  
12:47PM 2 you?

12:47PM 3 A Yes.

12:47PM 4 Q All right. And so now at this point, you know you are  
12:48PM 5 guilty of Count 16, the drug distribution count, right?

12:48PM 6 A Yes, we never denied that.

12:48PM 7 Q And you know they can prove it, right?

12:48PM 8 A Correct.

12:48PM 9 Q You went to Sunny Lee -- excuse me, Sunny Kim, and you  
12:48PM 10 threatened her because you knew they could prove that too,  
12:48PM 11 right?

12:48PM 12 A No, I did not, sir.

12:48PM 13 Q So let's talk about what you have told the jury. I think  
12:49PM 14 you said that as far as count -- excuse me, the kidnapping  
12:49PM 15 charge, the conspiracy on Count 11, that that began sometime in  
12:49PM 16 May or the summer of 2017?

12:49PM 17 A Yes.

12:49PM 18 Q It actually began on April 3, 2017, did it not?

12:49PM 19 A I don't remember, sir.

12:49PM 20 Q Do you recall getting on your pres10k Instagram a message  
12:49PM 21 from Sunny Kim saying, "hey, what's your number, you guys do  
12:49PM 22 termite tenting?"

12:49PM 23 A I -- yeah, maybe she did. I'm not sure, sir.

12:49PM 24 Q Let's take a look at 9010-003, second page, just for the  
12:50PM 25 witness. If we go to the first page.

12:50PM 1 Do you recognize on the bottom portion of the screen  
12:50PM 2 an Instagram account?  
12:50PM 3 A Yes, sir.  
12:50PM 4 Q Whose is it?  
12:50PM 5 A That is my Instagram account.  
12:50PM 6 Q If we move to -- from 9010-003-001 to the second page.  
12:51PM 7 Is there something on April 4th of 2017?  
12:51PM 8 A There is something on April 4th, 2017.  
12:51PM 9 Q Is it regarding a termite tenting?  
12:51PM 10 A Yes.  
12:51PM 11 Q Is it from Sunny Kim?  
12:51PM 12 A I can't see who sent me this message, sir.  
12:51PM 13 Q If we go back to the first page and we blow up the first  
12:51PM 14 part. If you'd just read that to yourself, and then I'm going  
12:51PM 15 to ask you some questions. Just let me know when you are done.  
12:52PM 16 A I'm finished.  
12:52PM 17 Q All right. Is that a message from Sunny Kim?  
12:52PM 18 A Yes.  
12:52PM 19 Q All right. Going back to the second page.  
12:52PM 20 In the blue, is that a message from Sunny Kim?  
12:52PM 21 A Yes.  
12:52PM 22 MR. KENNEDY: All right. At this time I'd move to  
12:52PM 23 admit 9010-003-001 and 2 and if there is a third page, Ashley.  
12:52PM 24 THE COURT: So the entirety of the exhibit.  
12:52PM 25 MR. KENNEDY: The entirety of this exhibit, Your

12:52PM 1 Honor.

12:52PM 2 THE COURT: Any objection?

12:52PM 3 MR. AKINA: Yes, to the portion of the first page that  
12:52PM 4 is not the Instagram message itself. I'd object to all of that  
12:52PM 5 on hearsay.

12:52PM 6 MR. KENNEDY: Your Honor, the Instagram portion is on  
12:53PM 7 the -- how it was delivered to us. If the Court wants us to  
12:53PM 8 black out the top portion, we did not get it in a fashion that  
12:53PM 9 doesn't have the top portion.

12:53PM 10 THE COURT: All right. So we can clean this up and  
12:53PM 11 not spend jury time on it. So there is no objection to the  
12:53PM 12 Instagram portion of this particular exhibit from the  
12:53PM 13 government; is that correct, Mr. Akina?

12:53PM 14 MR. AKINA: Correct, Your Honor.

12:53PM 15 THE COURT: So let's get this cleaned up offline after  
12:53PM 16 the trial day is over. But subject to that cleanup that the  
12:53PM 17 government has objected to, and which Mr. Kennedy appears to be  
12:53PM 18 okay with, this exhibit is admitted that's 9010-003. It's  
12:53PM 19 three pages long.

12:53PM 20 (Exhibit 9010-003 was received in evidence.)

12:53PM 21 MR. AKINA: Your Honor, my request would be that if  
12:53PM 22 any portion is blown up and shown to the jury, that it would  
12:53PM 23 not include the hearsay portions.

12:53PM 24 THE COURT: Yes, because that's not part of what I  
12:53PM 25 just admitted.

12:54PM 1 MR. KENNEDY: If we move to page two with the  
12:54PM 2 understanding this is your Instagram account. I would ask that  
12:54PM 3 just this page be published to the jury.  
12:54PM 4 THE COURT: Go ahead.  
12:54PM 5 BY MR. KENNEDY:  
12:54PM 6 Q So it's on April 4th, it looks like 2017 when Sunny Kim  
12:54PM 7 says "Hey, what's your number, you guys do termite tenting?"  
12:54PM 8 Then, "or text me," and then gives a number, correct?  
12:54PM 9 A Correct.  
12:54PM 10 Q And it looks like the number is cut off on what we  
12:54PM 11 received.  
12:54PM 12 So the initial conversation, then, about tenting Sunny  
12:54PM 13 Kim's residence occurs on April 4th, 2017, correct?  
12:54PM 14 A Yes.  
12:54PM 15 Q All right. So did she also call you?  
12:55PM 16 A I might have called her.  
12:55PM 17 Q As I understand what you've said previously, she either  
12:55PM 18 texted you or called you, asked you to meet for lunch, and you  
12:55PM 19 agreed to meet for lunch; is that fair?  
12:55PM 20 A That's fair.  
12:55PM 21 Q That's what you testified to. So now we can take that  
12:55PM 22 down.  
12:55PM 23 So you understood that Sunny Kim was selling her home,  
12:55PM 24 right?  
12:55PM 25 A No, I don't think -- when we did the tenting the first

12:55PM 1 time, she was selling -- she was selling her home.

12:55PM 2 Q All right. Let me see. Can we pull up --

12:56PM 3 Well, let me ask you this: Did you meet with the FBI  
12:56PM 4 in May of 2023?

12:56PM 5 A I may have. I don't recall.

12:56PM 6 Q Would seeing a document help you remember that meeting?

12:56PM 7 A Yes.

12:56PM 8 MR. KENNEDY: Can we pull up 9010-042 first page just  
12:56PM 9 for Mr. Kimoto?

12:56PM 10 BY MR. KENNEDY:

12:56PM 11 Q Sir, if you look at the bottom, does it appear that you  
12:56PM 12 were interviewed by the FBI on May 24th of 2023?

12:56PM 13 A Yes.

12:56PM 14 Q If you take a look at the second full paragraph, just read  
12:56PM 15 that to yourself and then I'm going to ask you some questions  
12:57PM 16 about it.

12:57PM 17 A Okay.

12:57PM 18 Q All right. We can take that down now.

12:57PM 19 Does that refresh your recollection about that lunch  
12:57PM 20 after the April 4th text that we saw?

12:57PM 21 A That wasn't accurate of what I said --

12:58PM 22 Q Okay.

12:58PM 23 A -- that day. I think they might have gotten mixed up.

12:58PM 24 Q Okay, so let me get this straight.

12:58PM 25 You're sitting in a room with a couple FBI agents,

12:58PM 1 right?

12:58PM 2 A Yes.

12:58PM 3 Q A Mr. Parker -- Special Agent Parker, right?

12:58PM 4 A Correct.

12:58PM 5 Q And Special Agent Palmer who is here, correct?

12:58PM 6 A Yes.

12:58PM 7 Q And they are listening to you and asking you questions,

12:58PM 8 right?

12:58PM 9 A Yes.

12:58PM 10 Q And they are taking down notes, correct?

12:58PM 11 A Yes.

12:58PM 12 Q And at a certain point, then you were provided with this

12:58PM 13 document, right?

12:58PM 14 A No.

12:58PM 15 Q You've never reviewed this document?

12:58PM 16 A I've never seen that document.

12:58PM 17 Q You never received it in discovery?

12:58PM 18 A I never seen that document, sir.

12:58PM 19 Q You've never went over their FBI report?

12:58PM 20 A I never went over their FBI report.

12:59PM 21 Q So this is the very first time you received this; you

12:59PM 22 never got it in discovery from your attorney?

12:59PM 23 A I never got it in discovery from my attorney.

12:59PM 24 Q You never got anything in terms of discovery, or just this

12:59PM 25 document?



12:59PM 1 A I've never seen this document, sir, before.

12:59PM 2 Q Okay. So did you ask to take a look at the interview at  
12:59PM 3 any point in time to see if it was correct, what they put down?

12:59PM 4 A No, I did not ask to review it.

12:59PM 5 Q All right. So if they said that Sunny Kim was selling her  
12:59PM 6 home, they got it wrong?

12:59PM 7 A Yeah, because the first time we tented her home, she  
12:59PM 8 wasn't selling her house. But when -- I don't know how long  
12:59PM 9 went by, a year or two, she decided to sell her house after  
12:59PM 10 that. And we actually re-tented her house at no cost.

12:59PM 11 Q Okay. So was it right that there was a home inspection?

01:00PM 12 A From what Sunny had said, yes.

01:00PM 13 Q Okay. And termites were discovered?

01:00PM 14 A Correct.

01:00PM 15 Q Sunny knew you worked for O'ahu Termite?

01:00PM 16 A Yes.

01:00PM 17 Q She asked if you could tent and fumigate the home?

01:00PM 18 A She asked if we could do it at no cost or a discounted  
01:00PM 19 rate because she had tented her house previously with us and  
01:00PM 20 she was inquiring about the five-year guarantee that we gave to  
01:00PM 21 her.

01:00PM 22 Q So you had previously done it for O'ahu Termite?

01:00PM 23 A I don't know which company, but I believe it was either --  
01:00PM 24 I mean, it was either Kama'aina or O'ahu Termite.

01:00PM 25 Q And so she was inquiring about tenting and fumigating her

01:00PM 1 home.

01:00PM 2 Did you ever tell the agents that there was a previous

01:00PM 3 one?

01:01PM 4 A I believe I disclosed that.

01:01PM 5 Q Okay. You disclosed it but have you reviewed any

01:01PM 6 interview notes that you -- any interview report that they

01:01PM 7 made?

01:01PM 8 A Again, I've never seen any of the interview reports that

01:01PM 9 they have made.

01:01PM 10 Q Okay. All right. Now, during this lunch, you told --

01:01PM 11 apparently, Sunny Kim also then said that her father's

01:01PM 12 accountant Robert Lee had embezzled money?

01:01PM 13 A Correct.

01:01PM 14 Q Stole money from her father?

01:01PM 15 A Correct.

01:01PM 16 Q And that Mr. Lee had forged his signature on documents --

01:01PM 17 A Correct.

01:01PM 18 Q -- and these forged documents that allowed Robert Lee to

01:01PM 19 steal a million dollars from Tony Kim?

01:01PM 20 A Yes.

01:01PM 21 Q All right. Did you check into any of that?

01:02PM 22 A No, I did not.

01:02PM 23 Q When you went on the internet later, did you check into

01:02PM 24 any of this?

01:02PM 25 A I may have looked up Robert Lee's name.

01:02PM 1 Q And did you see that actually, Mr. Lee had done a  
01:02PM 2 bankruptcy?

01:02PM 3 A No, I did not see that.

01:02PM 4 Q Did you see that it didn't have anything to do with  
01:02PM 5 embezzlement or stealing money?

01:02PM 6 A No, I did not.

01:02PM 7 Q Okay. All right. Now, you mentioned that Sunny Kim asked  
01:02PM 8 you during this lunch if you knew anyone who could assist in  
01:02PM 9 collecting her father's money, correct?

01:02PM 10 A Correct.

01:02PM 11 Q Now, you answered that it would be one half, right?

01:02PM 12 A Yes. 50 percent.

01:02PM 13 Q 50 percent, right?

01:02PM 14 A Yes.

01:02PM 15 Q You didn't need to talk to anybody, right?

01:02PM 16 A No, sir.

01:02PM 17 Q You set the terms: It would be 50 percent, right?

01:03PM 18 A Yes, sir.

01:03PM 19 Q You made the call before you talked to anybody else,  
01:03PM 20 right?

01:03PM 21 A Yes, sir.

01:03PM 22 Q You decided that it would be 50/50, right?

01:03PM 23 A Yes.

01:03PM 24 Q And she already told you that her father would be okay  
01:03PM 25 with this fee over a lunch meeting that was about tenting her

01:03PM 1 house?

01:03PM 2 A Yes.

01:03PM 3 Q So it was decided in one meeting what the terms were by

01:03PM 4 you and her, right?

01:03PM 5 A Yes.

01:03PM 6 Q You didn't have to ask anybody, did you?

01:03PM 7 A No. I said I had to ask my friend if he could go and talk

01:03PM 8 to that person.

01:03PM 9 Q No, but you already decided the terms would be 50/50,

01:03PM 10 right?

01:03PM 11 A I said 50/50, yes.

01:03PM 12 Q Right. 50 for them, 50 for you, right?

01:04PM 13 A Not for myself, sir.

01:04PM 14 Q Okay. Now, you told the jury the other day that you went

01:04PM 15 back to measure the house for fumigation, correct?

01:04PM 16 A After this previous meeting at the restaurant, yes.

01:04PM 17 Q Right. And you told her that you had found someone,

01:04PM 18 correct?

01:04PM 19 A Correct.

01:04PM 20 Q What you didn't tell the jury is that you told the FBI on

01:04PM 21 May 24th that you did not tell her who you had found?

01:05PM 22 A I don't understand your question, sir.

01:05PM 23 Q I'll be plain. You said you found someone, right?

01:05PM 24 A Yes, I said that I had asked my friend, and he said okay.

01:05PM 25 Q You didn't tell her who?

01:05PM 1 A No.

01:05PM 2 Q Okay. Because the other day, you told us that you said it  
01:05PM 3 was Michael Miske.

01:05PM 4 MR. AKINA: Objection; vague.

01:05PM 5 THE COURT: Overruled.

01:05PM 6 BY MR. KENNEDY:

01:05PM 7 Q So the truth is you told her that you had found someone,  
01:05PM 8 but you didn't tell them who, correct?

01:05PM 9 A Yes.

01:05PM 10 Q Now, at a certain point you received what you said was a  
01:06PM 11 call or text again from Sunny Kim after this meeting, correct?

01:06PM 12 A Yes.

01:06PM 13 Q And so -- between that time you went on the internet about  
01:06PM 14 Mr. Robert Lee, correct?

01:06PM 15 A Yes.

01:06PM 16 Q In connection with you setting the 50/50 terms, correct?

01:06PM 17 A I don't understand your question, sir.

01:06PM 18 Q Well, Ms. Kim -- Sunny Kim told you that once a week,  
01:07PM 19 Robert Kim goes to a restaurant next to the Central Pacific  
01:07PM 20 Bank on the corner of Ward and Queen, correct?

01:07PM 21 A Robert Lee.

01:07PM 22 Q Robert Lee, yes.

01:07PM 23 A Yes.

01:07PM 24 Q And so you told us the other day that what you did with  
01:07PM 25 that information is you went and you took a photograph of

01:07PM 1 Mr. Robert Lee when he was outside the restaurant, correct?

01:07PM 2 A Correct.

01:07PM 3 Q In addition to that, you followed Mr. Lee into the

01:07PM 4 restaurant to eat, right?

01:07PM 5 A Yes.

01:07PM 6 Q And while in the restaurant, you were able to photograph

01:07PM 7 Mr. Lee again without him knowing it, right?

01:07PM 8 A Yes.

01:07PM 9 Q Because you were surveilling with respect to your 50/50

01:08PM 10 split terms, correct?

01:08PM 11 A I don't understand the question, sir.

01:08PM 12 Q You met with Sunny Kim. You told her "I know someone but

01:08PM 13 it will be 50/50 split," right?

01:08PM 14 A Yes.

01:08PM 15 Q You set the terms, right?

01:08PM 16 A Yes.

01:08PM 17 Q You took surveillance of Mr. Robert Lee in connection of

01:08PM 18 that, correct?

01:08PM 19 A Yes.

01:08PM 20 Q You took a photograph of him outside the restaurant,

01:08PM 21 correct?

01:08PM 22 A Correct.

01:08PM 23 Q You followed him into the restaurant, correct?

01:08PM 24 A Correct.

01:08PM 25 Q You acted like you were eating, but you ordered a meal so

01:08PM 1 that you could take a better photograph of him, right?

01:08PM 2 A No, I actually ate, but --

01:08PM 3 Q Oh, I understand.

01:08PM 4 A -- I did take a picture of him in the restaurant.

01:08PM 5 Q What's that?

01:08PM 6 A You're correct. I did take a picture of him in the  
01:09PM 7 restaurant.

01:09PM 8 Q You didn't ask him his permission, did you?

01:09PM 9 A No, I did not.

01:09PM 10 Q You did it because you were surveilling him, right?

01:09PM 11 A Yes.

01:09PM 12 Q And then you texted the photograph of Mr. Lee back to  
01:09PM 13 Sunny Kim, right?

01:09PM 14 A Correct.

01:09PM 15 Q Now, you told this jury the other day something about a  
01:09PM 16 Post-It note.

01:09PM 17 Do you recall that?

01:09PM 18 A Yes.

01:09PM 19 Q A name, right?

01:09PM 20 A Correct.

01:09PM 21 Q A telephone number, right?

01:09PM 22 A Yes.

01:09PM 23 Q And you said there was an amount?

01:09PM 24 A Yes.

01:09PM 25 Q And you told the jury that you gave it to Michael Miske?

01:09PM 1 A I told the jury that I put it on Mike's computer in his  
01:09PM 2 office.  
01:09PM 3 Q Right. And you said to them repeatedly you thought he was  
01:09PM 4 just going to make a call, right?  
01:10PM 5 A Not necessarily make a call.  
01:10PM 6 Q What you said was he would make a call?  
01:10PM 7 A No, I said that he will talk to him.  
01:10PM 8 Q Oh, talk to him; make a call, talk to him?  
01:10PM 9 A No, he could talk in person.  
01:10PM 10 Q You could, but you could also pick up the telephone if you  
01:10PM 11 got a number, right?  
01:10PM 12 A You could.  
01:10PM 13 Q And you could call him?  
01:10PM 14 A Correct.  
01:10PM 15 Q Okay. And this is before this surveillance, right?  
01:10PM 16 A Yes.  
01:10PM 17 Q So then after that, you do this surveillance on your own,  
01:10PM 18 right, even though it's only going to be what you told the  
01:10PM 19 jury, a call or a meet, right?  
01:10PM 20 A I took the picture so Mike would know what he looks like  
01:10PM 21 when he visits the person.  
01:10PM 22 Q You took the picture, sir, because you sent it to Sunny  
01:10PM 23 Kim, correct?  
01:10PM 24 A Yes, to verify.  
01:10PM 25 Q Now, you told the jury that on October 17, 2017, that you



01:11PM 1 and Mike went to the Honolulu Club gym to work out together.

01:11PM 2 Do you recall that?

01:11PM 3 A I said that we headed to the gym. We parked but we didn't

01:11PM 4 enter the actual gym.

01:11PM 5 Q You said it was later in the day, right?

01:11PM 6 A Correct.

01:11PM 7 Q But the sun was still out, right?

01:11PM 8 A From what I believe.

01:11PM 9 Q You were in the car, right?

01:11PM 10 A Yes.

01:11PM 11 Q You said you were "talk story" on the way over?

01:11PM 12 A No, I said that we were talking story at the office before

01:11PM 13 we headed over to the gym. That's when we decided to go to the

01:12PM 14 gym.

01:12PM 15 Q All right. And then you arrived there. You say that Mike

01:12PM 16 says we have to go back to the office.

01:12PM 17 A Correct.

01:12PM 18 Q All right. Sir, you have grown up here your whole life,

01:12PM 19 right?

01:12PM 20 A Yes.

01:12PM 21 Q You know then that the sun goes down about 6:05 on

01:12PM 22 October 17th here in Honolulu?

01:12PM 23 A I don't know the exact time, sir, when it goes down.

01:12PM 24 Q And what you told the jury was that it was dark when you

01:12PM 25 got back to the office.

01:12PM 1 A Yes.

01:12PM 2 Q Now, if we look -- first of all, you've never given your  
01:13PM 3 phone to the prosecution, correct?

01:13PM 4 A No.

01:13PM 5 Q You've never offered up your phone to them, right?

01:13PM 6 A No.

01:13PM 7 Q You didn't give them your phone for what was happening on  
01:13PM 8 the 17th of October, 2017, correct?

01:13PM 9 A No. But actually, I did offer up the phone when I got  
01:13PM 10 arrested back in 2020.

01:13PM 11 Q Did they take it?

01:13PM 12 A They did not take it. They said to leave it in the  
01:13PM 13 vehicle.

01:13PM 14 Q All right. And so you offered it.

01:13PM 15 Is that the same phone you were using on October 17th?

01:13PM 16 A Yes.

01:13PM 17 Q Still have it?

01:13PM 18 A Not in my possession, sir.

01:13PM 19 Q Do you know where it is?

01:13PM 20 A I believe my attorney has it.

01:13PM 21 Q All right. Now, at 5:21 and 49 seconds, Wayne Miller --  
01:14PM 22 we looked at Government's Exhibit 5-37.

01:14PM 23 Do you remember that today?

01:14PM 24 A Yes.

01:14PM 25 Q If we could pull up Government's Exhibit 5-37 and go to

01:14PM 1 the back of the document, page six. It's in reverse order when  
01:14PM 2 you were going through it.  
01:14PM 3 Do you recall that?  
01:14PM 4 A Yes.  
01:14PM 5 Q Okay. So, to, like, do it in real time, we have to start  
01:14PM 6 at page six and go forward. So at 5:21:49 on October 17th,  
01:14PM 7 Wayne Miller is texting you and says, "yo."  
01:14PM 8 A Yes.  
01:14PM 9 Q Next at 5:33:41 --  
01:15PM 10 MR. KENNEDY: And is this published, Your Honor?  
01:15PM 11 THE COURT: It is.  
01:15PM 12 MR. KENNEDY: Can you folks see it? Can we pull up  
01:15PM 13 5-37 so the jury --  
01:15PM 14 THE COURT: I meant it was admitted. It was admitted  
01:15PM 15 and you may publish.  
01:15PM 16 MR. KENNEDY: Oh, thank you, Your Honor. I apologize.  
01:15PM 17 BY MR. KENNEDY:  
01:15PM 18 Q So at 5:21:49, there is a text from Wayne Miller to you,  
01:15PM 19 right?  
01:15PM 20 A Yes.  
01:15PM 21 Q Not to Michael Miske, right?  
01:15PM 22 A No.  
01:15PM 23 Q And it says, "yo," right?  
01:15PM 24 A Yes.  
01:15PM 25 Q Then roughly 12 minutes later, at 5:33:41, Wayne Miller

01:15PM 1 says to you, "Call me ASAP," two exclamation points, correct?

01:15PM 2 A Correct.

01:15PM 3 Q Not to Michael Miske, correct?

01:15PM 4 A No, sir.

01:15PM 5 Q All right. And (808) 584 -- excuse me, (808) 542-4516 is

01:16PM 6 the phone that is coming to you, right?

01:16PM 7 A Yes.

01:16PM 8 Q Wayne Miller's phone, correct?

01:16PM 9 A No. The 542-4516 is my number.

01:16PM 10 Q Oh, is your phone. Okay.

01:16PM 11 So that's how you recognize that you are receiving it?

01:16PM 12 A Yes.

01:16PM 13 Q Okay. So let's move forward. If we go to the page five

01:16PM 14 and blow up the portion down below.

01:16PM 15 Four minutes later, 5:37:07, it's "WTF brah"; WTF

01:16PM 16 being what the fuck, brah?

01:17PM 17 A Yes.

01:17PM 18 Q That's Wayne Miller to you, right?

01:17PM 19 A Yes.

01:17PM 20 Q And then you -- at 5:37:36 say, "text me back or

01:17PM 21 something." It's Wayne Miller, yes. "Text me back or

01:17PM 22 something," right?

01:17PM 23 A Yes.

01:17PM 24 Q So now, this is, in a span of less than a half hour, four

01:17PM 25 texts from Wayne Miller to you, right?

01:17PM 1 A Yes.

01:17PM 2 Q Not to Mike Miske, correct?

01:17PM 3 A Correct.

01:17PM 4 Q And one of them said ASAP with two exclamation points,

01:17PM 5 correct?

01:17PM 6 A Correct.

01:17PM 7 Q At 6:08:48, you text back for the first time, right?

01:17PM 8 A Yes.

01:17PM 9 Q "I was at the house."

01:18PM 10 A Yes.

01:18PM 11 Q You're not with Mike Miske, are you?

01:18PM 12 A No. This is a lie that I was telling Miller for the

01:18PM 13 excuse of not getting back to him.

01:18PM 14 Q Oh, this is a lie. That's what you're saying now?

01:18PM 15 A Yes. This text was sent to Miller so he would stop

01:18PM 16 texting me.

01:18PM 17 Q Oh, because I thought we were going through earlier when

01:18PM 18 the first time you found something out about this, and you said

01:18PM 19 you didn't know anything about the fact at this time.

01:18PM 20 Isn't that correct? Isn't that what you just told the

01:18PM 21 jury?

01:18PM 22 A Could you repeat the question?

01:18PM 23 Q Yeah. You told them you learned about the kidnapping in a

01:18PM 24 meeting with Mike and Wayne.

01:18PM 25 You just told them that today, correct?

01:18PM 1 A Yes.

01:18PM 2 Q Wayne is texting you. He's not in a meeting with you,  
01:19PM 3 sir.

01:19PM 4 A I don't understand what -- yeah, he's not in a meeting  
01:19PM 5 with us.

01:19PM 6 Q No, because you're at the house and "I left my phone in  
01:19PM 7 the truck. Hold, on she just got home." Correct?

01:19PM 8 A Yes.

01:19PM 9 Q All right. Let's move forward.

01:19PM 10 At 6:42:36, you say, meet -- "give me 15 minutes,"  
01:19PM 11 right?

01:19PM 12 A Yes.

01:19PM 13 Q Okay. At 6:44:54, you say, "K." Right?

01:20PM 14 You received "K" from Wayne Miller?

01:20PM 15 MR. AKINA: Objection; I think this is outgoing.

01:20PM 16 BY MR. KENNEDY:

01:20PM 17 Q Okay. So you say "K." All right?

01:20PM 18 A Yes.

01:20PM 19 Q Then it's "call you right back," incoming to Mr. Miller.

01:20PM 20 A Yes.

01:20PM 21 Q This is now almost more than an hour later, right?

01:20PM 22 A Yes.

01:20PM 23 Q No discussion of any meeting at all with Michael Miske,  
01:20PM 24 you, and Wayne Miller, correct?

01:20PM 25 A Yes.

01:20PM 1 Q You're just exchanging text messages with Wayne Miller,  
01:21PM 2 right?  
01:21PM 3 A Yes.  
01:21PM 4 Q Moving forward. 8:11, "brah," right?  
01:21PM 5 A Yes.  
01:21PM 6 Q And then at 8:11, "no more all night"?  
01:21PM 7 A Yes.  
01:21PM 8 Q Moving forward. "I know. Coming now at 8:12."  
01:21PM 9 A Yes.  
01:21PM 10 Q "How far you"? And then you go back, "I'm at Ala's, five  
01:21PM 11 to ten minutes," right?  
01:22PM 12 A Yes.  
01:22PM 13 Q You're meeting with Wayne Miller, correct?  
01:22PM 14 A Yes.  
01:22PM 15 Q No reference to any meeting in this text between you,  
01:22PM 16 Wayne Miller, and Michael Miske, correct?  
01:22PM 17 A No.  
01:22PM 18 Q No phone call to Mike Miske to turn around at the Honolulu  
01:22PM 19 Club and come back, right?  
01:22PM 20 A He told me in person, sir.  
01:22PM 21 Q No. What I'm saying, sir, is there is no phone call from  
01:22PM 22 Wayne Miller that he needs to turn around and come back,  
01:22PM 23 Mr. Miske.  
01:22PM 24 That didn't happen, did it?  
01:22PM 25 A I don't understand what you are asking, sir.

01:22PM 1 Q What I'm saying is you went to the Honolulu Club, right?

01:22PM 2 A Yes.

01:22PM 3 Q You said you had to turn around and go back to the office,

01:22PM 4 right?

01:22PM 5 A Correct.

01:22PM 6 Q This involved Wayne Miller, right?

01:22PM 7 A No. Wayne wasn't -- only myself and Mike went to the

01:22PM 8 Honolulu club.

01:22PM 9 Q But you said you had to come back to the office, right?

01:22PM 10 A Yeah.

01:22PM 11 Q Right. And then you said that Mike wrote something up on

01:23PM 12 the board, right?

01:23PM 13 A That's correct.

01:23PM 14 Q And then you said that Wayne Miller came there, right?

01:23PM 15 A Yes.

01:23PM 16 Q And all of that happened. But what we see in the phone

01:23PM 17 calls is that between 5:21 all the way up to 8:14, all we have

01:23PM 18 is Wayne Miller trying to get in touch with you, right?

01:23PM 19 A Correct.

01:23PM 20 Q Because Wayne Miller is the guy you're splitting the 50/50

01:23PM 21 with; not Michael Miske, right?

01:23PM 22 A That is not correct.

01:23PM 23 Q There is not a single phone call from Wayne Miller to

01:23PM 24 Michael Miske on October 17, 2017.

01:23PM 25 MR. AKINA: Objection; speculation.



01:23PM 1 THE COURT: Sustained.

01:23PM 2 BY MR. KENNEDY:

01:23PM 3 Q No mention in this of any meeting that had occurred during  
01:23PM 4 this time period, correct?

01:23PM 5 A There is no mention of any meeting. You are correct.

01:24PM 6 Q The first time that there is any connection that you and  
01:24PM 7 Wayne Miller are going to meet is at 8:14:15 when you are at  
01:24PM 8 Ala Moana mall, right?

01:24PM 9 A Yes.

01:24PM 10 Q All right. Now, Wayne Miller has a black Crown Vic,  
01:24PM 11 right?

01:24PM 12 THE COURT REPORTER: Excuse me, black crown...

01:24PM 13 BY MR. KENNEDY:

01:24PM 14 Q Vic. It's like a police car, right?

01:24PM 15 A Yes.

01:24PM 16 Q You told the FBI on May 24th of 2023 that Miller said in  
01:25PM 17 this supposed meeting that Mr. Lee was in a van when Miller  
01:25PM 18 came to the shop.

01:25PM 19 Do you recall that?

01:25PM 20 A No, I don't recall.

01:25PM 21 Q You don't recall telling the FBI that Miller said, he's in  
01:25PM 22 a -- that Jonah Ortiz has him in a van.

01:25PM 23 You don't recall saying that?

01:25PM 24 A I don't recall. From what I recall, I said that Miller  
01:25PM 25 came to the shop in a light colored sedan.

01:25PM 1 Q Sir, let's take a look at what's been marked as 9010-042.

01:26PM 2 See if this refreshes your recollection about what you told the

01:26PM 3 FBI. If we go to the 0004 page in there, and this is just for

01:26PM 4 you, Mr. Kimoto, if you go down to the paragraph one, two,

01:26PM 5 three, four and read that entire fourth paragraph to yourself.

01:27PM 6 Let me know when you are finished reading that

01:27PM 7 paragraph, sir.

01:27PM 8 THE COURT: Mr. Kennedy, as Mr. Kimoto is finishing

01:27PM 9 reading up the section you asked him to read, it's getting

01:27PM 10 close to 1:30, so please give some thought to asking your final

01:27PM 11 questions for the day.

01:27PM 12 MR. KENNEDY: I will, Your Honor, as soon as he lets

01:28PM 13 me know that he has read that paragraph.

01:28PM 14 THE COURT: Thank you.

01:28PM 15 THE WITNESS: I'm finished.

01:28PM 16 BY MR. KENNEDY:

01:28PM 17 Q All right. Can we take a down please? On May 24, two FBI

01:28PM 18 agents were in the room listening to what you said, correct?

01:28PM 19 A Correct.

01:28PM 20 Q You told them that Miller said Lee was in a van with Jonah

01:28PM 21 Ortiz.

01:28PM 22 A I did not say that.

01:28PM 23 Q And then you told them that Miller wanted to know how he

01:28PM 24 was going to get paid for purchasing the van.

01:28PM 25 A I did not say that. I said that Wayne was asking for

01:28PM 1 reimbursement for the van.

01:28PM 2 Q Asking for a van that you told them Jonah Ortiz had Robert

01:29PM 3 Lee in it?

01:29PM 4 A That's not what I said, sir.

01:29PM 5 Q Asking for money for disposing of the van by burning it,

01:29PM 6 is what you told the FBI on May of 2023?

01:29PM 7 A That is not what I said. I didn't know how they would

01:29PM 8 dispose of the van.

01:29PM 9 Q You didn't know because it's a lie, and there was no van,

01:29PM 10 and Mr. Lee was never in a van; you just made it up, didn't

01:29PM 11 you?

01:29PM 12 A No, sir.

01:29PM 13 Q And you told the FBI that in May of 2023.

01:29PM 14 A I did not know what Mr. Lee was held in.

01:29PM 15 Q I have nothing further for today.

01:29PM 16 THE COURT: All right, so we are right at 1:30. As we

01:30PM 17 go to break for the trial day I'll remind our jurors to refrain

01:30PM 18 from discussing the substance of this case with anyone,

01:30PM 19 including each other. Also, do not access any media or other

01:30PM 20 accounts of this case that maybe out there; and finally, please

01:30PM 21 do not conduct any of your own independent investigations into

01:30PM 22 the facts, circumstances or persons involved. So we will see

01:30PM 23 you at 8:30 tomorrow and we will resume at that time with

01:30PM 24 Mr. Kennedy's cross-examination of Mr. Kimoto.

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COURT REPORTER'S CERTIFICATE

I , Gloria T. Bediamol, Official Court Reporter,  
United States District Court, District of Hawaii, do hereby  
certify that pursuant to 28 U.S.C. §753 the foregoing is a  
complete, true, and correct transcript from the  
stenographically reported proceedings held in the  
above-entitled matter and that the transcript page format is in  
conformance with the regulations of the Judicial Conference of  
the United States.

DATED at Honolulu, Hawaii, May 28, 2024.

/s/ Gloria T. Bediamol  
GLORIA T. BEDIAMOL.  
RMR, CRR, FCRR